



# RESPONSES TO COMMENTS

## VOLUME V

### NEWPORT BANNING RANCH PROJECT CITY OF NEWPORT BEACH

STATE CLEARINGHOUSE NO. 2009031061

Prepared for	City of Newport Beach 3300 Newport Boulevard Newport Beach, California 92663
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March 16, 2012



TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Section 1.0 Introduction .....	1-1
Section 2.0 List of Respondents .....	2-1
Section 3.0 Responses to Environmental Comments .....	3-1
Section 4.0 Clarifications and Revisions .....	4-1

LIST OF APPENDICES

A	Preliminary Water Quality Management Plan
B	Materials Referenced in Letters O1b, O21b, O21c, O21d, O58c, O69a, O72, and O90e





## SECTION 1.0 INTRODUCTION

The purpose of this document is to present public comments and responses to comments received on the Draft Environmental Impact Report (EIR) (State Clearinghouse Number 2009031061) for the Newport Banning Ranch Project located in the City of Newport Beach and its Sphere of Influence. The Draft EIR was released for public review and comment by the City of Newport Beach on September 9, 2011. The 60-day public review period ended on November 8, 2011.

In accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Newport Beach, as the lead agency, has evaluated all substantive comments received on the Newport Banning Ranch Draft EIR, and has prepared written responses to these comments. This document has been prepared in accordance with CEQA and represents the independent judgment of the lead agency.

The Final EIR for the Project consists of the Draft EIR and its technical appendices; the Responses to Comments included herein; other written documentation prepared during the EIR process; and those documents which may be modified by the City Council at the time of consideration of certification of the Final EIR. The City Council would also consider adoption of a Mitigation Monitoring and Reporting Program (MMRP), a Statement of Findings of Fact, and a Statement of Overriding Considerations as part of the approval process for the proposed Project.

This Response to Comments document is organized as follows:

**Section 1** provides a brief introduction to this document.

**Section 2** identifies the Draft EIR commenters.

**Section 3** provides responses to substantive comments received on the Draft EIR. Responses are provided in the form of individual responses to comment letters received. Comment letters are followed immediately by the responses to each letter.

**Section 4** presents clarifications to the Draft EIR, identifying revisions to the text of the document.



## SECTION 2.0 LIST OF RESPONDENTS

In accordance with the State CEQA Guidelines Section 15132, the following is a list of persons, organizations, and public agencies that submitted comments on the Draft EIR received as of close of the public review period on November 8, 2011. Comments received after the close of the public review period are also included. Comments have been numbered and responses have been developed with corresponding numbers.

### 2.1 COMMENTS RECEIVED

Letter No.	Respondent	Date of Correspondence	Precedes Response on Page No.
F1	National Oceanic and Atmospheric Administration, National Marine Fisheries Service	November 8, 2011	3-41

#### State Agencies

Letter No.	Respondent	Date of Correspondence	Precedes Response on Page No.
S1a	California Coastal Commission	November 4, 2011	3-46
S1b	California Coastal Commission	November 8, 2011	3-62
S2	California Department of Transportation	November 8, 2011	3-81
S3	Department of Conservation	October 20, 2011	3-88
S4	Department of Toxic Substances	November 7, 2011	3-91
S5	Native American Heritage Commission	October 3, 2011	3-98
S6a	State of California Governor's Office of Planning and Research	October 26, 2011	3-100
S6b	State of California Governor's Office of Planning and Research	November 9, 2011	3-105
S7	California Regional Water Quality Control Board, Santa Ana Region	November 8, 2011	3-109

#### County Agencies

Letter No.	Respondent	Date of Correspondence	Precedes Response on Page No.
C1	OC Public Works	November 8, 2011	3-116

#### Regional Agencies and Special Districts

Letter No.	Respondent	Date of Correspondence	Precedes Response on Page No.
R1	Airport Land Use Commission	November 7, 2011	3-123
R2a	Costa Mesa Sanitary District	September 20, 2011	3-127
R2b	Costa Mesa Sanitary District	November 7, 2011	3-136

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
R3	Local Agency Formation Commission (LAFCO)	November 4, 2011	3-148
R4a	Mesa Consolidated Water District	November 2, 2011	3-159
R4b	Mesa Consolidated Water District	November 7, 2011	3-170
R5	Newport-Mesa Unified School District	October 21, 2011	3-176
R6	Orange County Fire Authority	September 22, 2011	3-180
R7	Orange County Sanitation District	November 7, 2011	3-185
R8	Orange County Water District	November 4, 2011	3-191
R9	South Coast Air Quality Management District	November 10, 2011	3-195
R10	Orange County Transportation Authority		3-199

### Local Agencies and Committees

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
L1	City of Newport Beach Environmental Quality Affairs Citizens' Advisory Committee (EQAC)		3-226
L2	City of Irvine	November 11, 2011	3-253
L3a	City of Costa Mesa	November 8, 2011	3-257
L3b	City of Costa Mesa	November 8, 2011	3-267
L4	City of Huntington Beach	October 31, 2011	3-280

### Organizations, Companies, and Individuals

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
O1a	Banning Ranch Conservancy	November 8, 2011	3-292
O1b	Banning Ranch Conservancy-Mansfield	November 7, 2011	3-294
O2	Banning Ranch Defenders	November 8, 2011	3-298
O3	California Cultural Resources Preservation Alliance	November 3, 2011	3-302
O4	California Native Plant Society	November 7, 2011	3-306
O5	The Kennedy Commission	November 4, 2011	3-313
O6	Lido Sands Community Association	November 8, 2011	3-316
O7	Manatt Phelps & Phillips	November 8, 2011	3-321
O8	Newport Condominium Association	November 7, 2011	3-324
O9	Newport Crest	November 4, 2011	3-328
O10	Newport Heights Improvement Association	November 8, 2011	3-332
O11	Orange County Coastkeeper	November 8, 2011	3-335
O12	Residents of Costa Mesa Bluff	November 7, 2011	3-343
O13	Sea and Sage Audubon Society	November 7, 2011	3-349
O14	Southern California Gas Company	September 23, 2011	3-355
O15	Surfrider Foundation	November 7, 2011	3-359
O16	SWAPE	November 8, 2011	3-368

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
O17	West Newport Beach Association	November 8, 2011	3-371
O18	John Allen	November 8, 2011	3-374
O19a	Leslee Allen	November 1, 2011	3-376
O19b	Leslee Allen	November 2, 2011	3-378
O20	Patricia Barnes	November 7, 2011	3-381
O21a	Bruce Bartram	October 14, 2011	3-389
O21b	Bruce Bartram	October 26, 2011	3-395
O21c	Bruce Bartram	November 4, 2011	3-399
O21d	Bruce Bartram	November 7, 2011	3-404
O22a	Bill Bennett	November 7, 2011	3-406
O22b	Bill Bennett	November 7, 2011	3-408
O22c	Bill Bennett	November 7, 2011	3-410
O22d	Bill Bennett	November 8, 2011	3-412
O23	Cindy Black	November 7, 2011	3-419
O24	Sharon Boles	November 5, 2011	3-424
O25a	Don Bruner	November 5, 2011	3-427
O25b	Don Bruner	November 5, 2011	3-429
O25c	Don Bruner	November 8, 2011	3-432
O25d	Don Bruner	November 8, 2011	3-436
O25e	Don Bruner	November 8, 2011	3-439
O26	Steve Bunting	October 22, 2011	3-446
O27	Brian Burnett	November 8, 2011	3-450
O28	Toni Callaway	November 7, 2011	3-456
O29	Dorene Christensen	November 4, 2011	3-467
O30	Francis Cignotti	October 30, 2011	3-470
O31	David Cooley	November 5, 2011	3-472
O32	Amy Davis	November 7, 2011	3-475
O33	Penny Elia	November 8, 2011	3-478
O34	Iris Fieldman	November 6, 2011	3-480
O35	Natalie Fogarty	November 7, 2011	3-485
O36	Allan Forster	November 8, 2011	3-494
O37	Suzanne and Allen Forster	November 8, 2011	3-500
O38a	Suzanne Forster	November 4, 2011	3-503
O38b	Suzanne Forster	November 7, 2011	3-514
O38c	Suzanne Forster	November 8, 2011	3-519
O38d	Suzanne Forster	November 8, 2011	3-526
O39a	Ron Frankiewicz	November 5, 2011	3-529
O39b	Ron Frankiewicz	November 5, 2011	3-531
O39c	Ron Frankiewicz	November 6, 2011	3-533
O39d	Ron Frankiewicz	November 6, 2011	3-535
O40a	Sandie Frankiewicz	November 6, 2011	3-537
O40b	Sandie Frankiewicz	November 6, 2011	3-539
O40c	Sandie Frankiewicz	November 6, 2011	3-541
O41	Mary Froemke	November 8, 2011	3-543

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
O42	Jennifer Frutig	November 8, 2011	3-547
O43	Don Funk	November 6, 2011	3-552
O44	Gary Garber	November 5, 2011	3-554
O45	Kondace Garber	November 6, 2011	3-556
O46	Sandra Genis	November 8, 2011	3-581
O47	J. Edward Guilmette	November 6, 2011	3-626
O48a	Olwen Hageman	November 7, 2011	3-629
O48b	Olwen Hageman	November 8, 2011	3-633
O49	R. Hageman	November 8, 2011	3-638
O50	Robert Hamilton	November 8, 2011	3-655
O51	Susan Harker	November 8, 2011	3-664
O52	Heather Hendrickson	November 8, 2011	3-666
O53a	Vicki Hernandez	November 6, 2011	3-674
O53b	Vicki Hernandez	November 7, 2011	3-687
O54	James Heumann	November 1, 2011	3-691
O55a	Tevis Hill	November 4, 2011	3-695
O55b	Tevis Hill	November 7, 2011	3-699
O56	Daniel Johnson	November 8, 2011	3-710
O57	Dorothy Kraus	October 24, 2011	3-714
O58a	Mike and Dorothy Kraus	October 30, 2011	3-719
O58b	Mike and Dorothy Kraus	November 5, 2011	3-721
O58c	Mike and Dorothy Kraus	November 8, 2011	3-737
O59	Mary Lee	November 8, 2011	3-749
O60	Ginny Lomardi	November 4, 2011	3-751
O61	Joann Lombardo	November 7, 2011	3-753
O62	Cathy Malkemus	November 6, 2011	3-758
O63	Paul Malkemus	November 8, 2011	3-765
O64	Jim Mansfield	November 8, 2011	3-773
O65	Fred Marsh	November 8, 2011	3-781
O66a	Sandra McCaffrey	November 8, 2011	3-785
O66b	Sandra McCaffrey	November 8, 2011	3-790
O67	Chris McEvoy	November 8, 2011	3-793
O68a	Dennis McHale	November 7, 2011	3-804
O69a	Jim Mosher	November 8, 2011	3-818
O69b	Jim Mosher	November 8, 2011	3-827
O70	Carl Mumm	November 2, 2011	3-831
O71a	Helen Nadel	September 19, 2011	3-840
O71b	Helen Nadel	November 8, 2011	3-845
O72	Kevin Nelson	November 8, 2011	3-850
O73	Barry Nerhus	November 7, 2011	3-857
O74	J. Edward Perry	November 8, 2011	3-864
O75	Everette Phillips	November 8, 2011	3-867
O76	Gerard Proccacino	November 7, 2011	3-871
O77	Norbert Puff	November 4, 2011	3-874

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
O78	Dean Reinemann	November 8, 2011	3-880
O79	Stanley Rosenthal	November 4, 2011	3-887
O80	Margaret Royall	November 8, 2011	3-889
O81	Sandi (no last name provided)	November 7, 2011	3-901
O82	Julia Shunda	November 6, 2011	3-905
O83a	Michelle Simpson	November 7, 2011	3-907
O83b	Michelle Simpson	November 7, 2011	3-909
O84	J. Sisker	November 4, 2011	3-911
O85	N. Skinner	November 4, 2011	3-914
O86	Danielle Soriano	November 8, 2011	3-916
O87a	Norman Suker	November 7, 2011	3-920
O87b	Norman Suker	November 8, 2011	3-923
O88a	Dave Sutherland	November 6, 2011	3-928
O88b	Dave Sutherland	November 6, 2011	3-930
O88c	Dave Sutherland	November 6, 2011	3-932
O88d	Dave Sutherland	November 6, 2011	3-934
O88e	Dave Sutherland	November 6, 2011	3-936
O88f	Dave Sutherland	November 6, 2011	3-938
O89	David Volz	October 24, 2011	3-943
O90a	Terry Welsh	October 21, 2011	3-948
O90b	Terry Welsh	November 6, 2011	3-954
O90c	Terry Welsh	November 8, 2011	3-957
O90d	Terry Welsh	November 8, 2011	3-978
O90e	Terry Welsh	November 6, 2011	3-982

#### Public Meeting During Public Review Period

<b>Letter No.</b>	<b>Respondent</b>	<b>Date of Correspondence</b>	<b>Precedes Response on Page No.</b>
M1	City of Newport Beach Planning Commission Study Session	November 2, 2011	3-985





## **SECTION 3.0**

### **RESPONSES TO ENVIRONMENTAL COMMENTS**

This section includes responses to all substantive environmental issues raised in comments received on the Newport Banning Ranch Draft EIR (Draft EIR). Comments received during the public review period on the Draft EIR raised a wide array of issues. Many of the comments were on common issues or concerns. For this reason, topical responses have been prepared. This approach reduces redundancy throughout the responses to comments document and provides the reader with a comprehensive response to the broader issue. For these Topical Responses, subheadings have been provided to allow the reader to focus on a specific issue or read the broader response, which may go beyond the specific focus of his or her comment. No topical response was provided where no comments or only very minimal comments were provided on the Draft EIR. After the Topical Responses, responses are provided for each of the comments received. This section is formatted so that the respective comment letters are followed immediately by the corresponding responses.



## TOPICAL RESPONSES



## **TOPICAL RESPONSES**

### **OILFIELD REGULATORY OVERSIGHT AND REMEDIATION**

#### **Regulatory Oversight**

The oilfield operations at NBR are governed by regulations of the California Department of Conservation, Department of Oil, Gas and Geothermal Resources (DOGGR). The DOGGR has specific guidelines for the abandonment or reabandonment if necessary of oil wells. For oilfields that are abandoned for future development purposes, DOGGR has established a process called "Construction Site Review" that must be followed.

The oilfield operator, West Newport Oil, is a separate entity from the Project Applicant, Newport Banning Ranch LLC. While agreements between the mineral rights owner, HDLLC, and oilfield operator, West Newport Oil, and Newport Banning Ranch LLC establish the rights of the surface owners to develop the Project site, the oil operations within the consolidation areas are wholly within the control and discretion of West Newport Oil.

With respect to oil production and consolidation, it is important to clarify which components of the oil operations are considered a part of the proposed Project. The drilling and operation of oil wells on the Project site, including within the two proposed oil consolidation sites, are allowed uses today and considered part of the existing uses on site and not a component of the proposed Project. This does not change with the implementation of the proposed Project. The removal of existing oil facilities and site remediation in areas proposed for the residential, retail, recreation, resort inn, and open space uses are a part of the proposed Project because absent those activities, the land could not be developed for the uses proposed by the Applicant. While the City is the lead agency for consideration of approval of the proposed Project, the oilfield and its operations are not a part of the proposed Project and could continue to operate without City approval of the Newport Banning Ranch development project. Because the majority of the oilfield is within unincorporated County jurisdiction, if the proposed Project is not approved by the City and subsequently annexed to the City, the oilfield would remain under County of Orange jurisdiction.

Because the oil operations pre-date the establishment of the California Coastal Act, oilfield operations on the property were granted an exemption by the California Coastal Commission's (Coastal Commission) predecessor agency, the South Coast Regional Coastal Zone Conservation Commission (Claim for Exemption No. E-7-27-73-144, March 24, 1975) that exempts from coastal permit requirements the continued operation and maintenance of the existing oil wells; drilling, redrilling and repairs to existing wells and specified new wells; and abandonment and equipment/pipeline removal and cleanup in accordance with State and local agency requirements.

The two proposed oil consolidation sites are active oil producing and handling areas for the West Newport Oil Company's and City's oil operations. Both sites currently contain oil wells and main oil treating facilities: the northern site contains the West Newport Oil Company main oil facility and the site near West Coast Highway contains the City's main oil facility. No new main facility sites are proposed to be constructed at these locations. Both the West Newport Oil Company and the City are currently able to drill new wells and construct supporting facilities as needed within these areas. This would continue in the same manner should the proposed Project be approved and could occur even if the Project were not approved.

## **Remediation**

Environmental assessment and cleanup work of the oilfield is conducted under the regulatory oversight of the Regional Water Quality Control Board (RWQCB), Santa Ana Region and/or the Orange County Health Care Agency, Environmental Health Division (OCHCA). This existing oversight is expected to continue through field abandonment and remediation activity because both agencies have the most experience of any agencies with oilfield-to-development projects. It is expected that the RWQCB would continue to be the lead agency until the site receives closure.

All remediation activities, such as excavating pipelines, soil remediation, oil well abandonment and re-abandonment, would be conducted pursuant to State and local requirements. With the exception of the oil consolidation sites, any contaminants would also be remediated to State and local standards and requirements. Remediation to State and local standards would ensure that these areas are safe for human exposure in the future. Contaminated material that cannot be efficiently remediated on site would be transported off site and disposed of in accordance with applicable regulatory requirements. (See Section 3.6-10 of Section 3.0, Project Description, of the Draft EIR on page 3-34.) Section 4.5, Hazards and Hazardous Materials, of the Draft EIR summarizes and Appendix D in the Draft EIR, contains the draft Remedial Action Plan (dRAP), which identifies the areas proposed for remediation. Mitigation Measure (MM) 4.5-1 requires that a final Remedial Action Plan be submitted to and approved by RWQCB and/or the OCHCA.

The dRAP details the findings of both a Phase I and Phase II ESA which contain initial findings of contaminants on the Project site. It should be noted that, according to the Phase II EA, “at each of the areas tested, no contaminant levels were found to exceed the hazardous waste criteria (i.e., concentration levels defined by State and federal guidelines)”. Because the soils do not exceed hazardous waste criteria levels, all of the estimated 246,000 cubic yards (cy) of remediated soil can be treated and used on site. Table 4.5-1 of Section 4.5 provides a summary of the soil sample results from the Phase II EA.

The Base Environmental Condition of the property is documented in the 2001 Environmental Assessment (EA) report. The 2001 EA involved comprehensive testing of the property including all current and historic oilfield operating areas. This report was submitted to and reviewed by the RWQCB. A Phase I update in 2005 and 2008 found no significant changes that warranted additional field testing. The dRAP outlines the scope of the planned remediation, the regulatory oversight structure, the remedial processes that would be used, and the existing soil cleanup criteria. In addition to targeted remediation, all development areas would be monitored, tested, and remediated by credentialed third-party experts during mass grading to ensure that nothing is overlooked and all soil impacts are mitigated. Remediation work would be completed and approved by the regulatory oversight agencies before any construction work is initiated in those areas.

The 2001 EA was submitted and reviewed by the RWQCB which is also the lead agency for the current remedial actions on the property. Additional oversight for air and vapor control would be provided by the South Coast Air Quality Management District (SCAQMD) and the Orange County Fire Authority (OCFA). All environmental testing is conducted by third-party consultants and analyzed and validated by State certified laboratories using chain of custody procedures to ensure the integrity of the results.

## **TOPICAL RESPONSE SUNSET RIDGE PARK**

The City of Newport Beach (City) is currently processing a Coastal Development Permit (CDP) application for the development of the Sunset Ridge Park, which was the subject of certified Final Environmental Impact Report (EIR) No. 2009051036. As approved by the City, access to Sunset Ridge Park would be provided from the Newport Banning Ranch property. All environmental impacts associated with the Sunset Ridge Park project, including this access road were analyzed in the Sunset Ridge Park Project Final EIR. The California Coastal Commission (Coastal Commission) has not yet acted on the City's CDP application for Sunset Ridge Park, and no findings or determinations have been made by the Coastal Commission as to the Sunset Ridge Park, including the access road that traverses the Newport Banning Ranch property. Therefore, the implication by some commenters that the Coastal Commission has determined that no access from West Coast Highway will be permitted is not reflected in the administrative record.

Some commenters have suggested that the City is not in compliance with the Coastal Act. As noted above, the City is currently processing its CDP for the Sunset Ridge Project, as required by the Coastal Act. It appears that these comments are directed at the Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02 ("Consent Orders") that was entered into by parties including the Coastal Commission, Newport Banning Ranch LLC, and the City in April 2011. However, the alleged unpermitted development that was the subject of the Consent Orders was not conducted by the City nor was the City the owner of the property at the time of the alleged violations. Further, the Consent Orders noted that the City disputes that any of the areas subject to the Consent Orders constitute environmentally sensitive habitat. It is important to note that the Coastal Commission agreed that the Consent Orders were not binding on any future CDP or any proceeding before the Coastal Commission on property other than the impacted areas. In fact, the Consent Orders confirm that an analysis would be conducted by the Coastal Commission on any future CMP or other proceeding before the Coastal Commission on the subject properties.

**TOPICAL RESPONSE**  
**COASTAL COMMISSION'S CONSENT CEASE AND DESIST ORDER**  
**AND CONSENT RESTORATION ORDER (COASTAL COMMISSION CONSENT ORDERS)**

Commenters raised questions regarding the Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02 ("Consent Orders") that was entered into among parties including the California Coastal Commission (Coastal Commission), Newport Banning Ranch LLC, and the City of Newport Beach (City) in April 2011, to resolve unpermitted development conducted by Herman Weissker, Inc., a contractor for Southern California Edison (both Herman Weissker, Inc. and Southern California Edison are also parties to the Consent Orders) that occurred on portions of the Newport Banning Ranch Project site and property owned by the City (specifically, the Sunset Ridge Park site) in connection with a Southern California Edison utility project. The areas on which the unpermitted work occurred were identified in the Consent Orders as the Northwest (0.21 acre), Southeast (0.62 acre) and Northeast polygons (0.18 acre), of which 0.67 acre were on the Project site and 0.16 acre were on the City's property. These areas were referred to in the Consent Orders as the "Impacted Areas." The City did not own the property at the time of the unpermitted development.

Although the Consent Orders identify unpermitted development that occurred on approximately 0.85 acre of the Project site, the activities addressed in the Consent Orders were not connected with the proposed Newport Banning Ranch Project or the Sunset Ridge Park Project, nor were they undertaken by the Project Applicant or the landowners of the Project site. Rather, the Consent Orders arose from work undertaken by a contractor to Southern California Edison working on a municipal utility project several years (2004-2006) prior the Newport Banning Ranch Project Application was submitted to the City.

The Consent Orders found that development, as defined by the Coastal Act, had occurred on the property at various times between 2004 to 2006, including the removal of "major vegetation" as defined by the Coastal Act from the Northwest and Southeast polygons, and the placement of pipe conduits, vehicles, mechanized equipment, and construction materials had occurred on all three of the areas. In order to address the unpermitted development, the Consent Orders set forth a restoration program that will be undertaken by the City and Newport Banning Ranch LLC, which includes (1) revegetation of the Northwest and Southeast polygons with coastal sage scrub and other native vegetation; and (2) mitigation of an additional 2.5 acres through creation and/or enhancement of coastal sage vegetation that provides foraging and breeding opportunities for the coastal California gnatcatcher (*Poliophtila californica californica*), and which shall be permanently protected. Of the 2.5 acres of mitigation required under the Consent Orders, 0.48 acre is the responsibility of the City and 2.02 acres are the responsibility of Newport Banning Ranch LLC. The 2.02 acres of mitigation provided by Newport Banning Ranch LLC will not be included in any mitigation that the proposed Project may be required to provide to address impacts to biological resources identified in Section 4.6, Biological Resources, of the Draft EIR. Potential candidate areas on the Project site on which the 2.02 acres of mitigation can be provided were identified in the Consent Orders. Newport Banning Ranch LLC and the City are currently implementing the Restoration Plan prepared pursuant to the Consent Orders and approved by the Coastal Commission.

The Coastal Commission also found as part of the Consent Order process that portions of the Impacted Areas, specifically the Northwest and Southeast Polygons (exclusive of the roadway that bisects the Southeast polygon), constituted Environmentally Sensitive Habitat Area (ESHA) because it functions as observed habitat for the threatened coastal California gnatcatcher. Section 30107.5 of the Coastal Act defines an environmentally sensitive area as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their



special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments”.

The Consent Orders state that the findings set forth in the Coastal Commission Staff Report that accompanied the Consent Orders “are determinative only as to the Impacted Areas, and shall not be binding on any future coastal development permit or other proceeding before the Coastal Commission on property other than the Impacted Areas”. Therefore, although the Coastal Commission has identified areas of ESHA on the Project site (specifically the 0.21 acre Northwest Polygon and the 0.46 acre portion of the Southeast Polygon) in connection with its action in adopting the Consent Orders, the Coastal Commission has not made an ESHA determination for the remainder of the Newport Banning Ranch Project site, and no conclusions of ESHA can and will be made by the City at this time as part of the EIR process that would in any way bind the Coastal Commission or elucidate on the Coastal Commission’s ultimate conclusions. Rather, as appropriate under CEQA, the City has analyzed the impacts of the project, and concluded that they can be reduced to a less-than-significant level or avoided with appropriate measures. As stated in the Consent Orders, a separate analysis will be undertaken by the Coastal Commission in connection with any future Coastal Development Permit application or proceeding before the Coastal Commission involving these properties.

## **TOPICAL RESPONSE ENVIRONMENTALLY SENSITIVE HABITAT AREAS (ESHA)**

Commenters on the Draft EIR asked questions regarding the presence of Environmentally Sensitive Habitat Area (ESHA) on the Newport Banning Ranch Project site and the City of Newport Beach's (City) Sunset Ridge Park site.

As a preliminary matter, the scope of the Newport Banning Ranch Draft EIR is the proposed Newport Banning Ranch Project and the Project site. Activities conducted on or the existing conditions of the City's Sunset Ridge Park site are outside of the scope of this EIR and its analysis, and therefore were not addressed in the Draft EIR except in the context of the cumulative impact analysis.

The California Coastal Act (Coastal Act) requires the protection of "environmentally sensitive areas".. As stated in *Security National Guaranty v. California Coastal Commission Sierra Club* (2008), environmentally sensitive habitats may either be designated by a local agency in its Land Use Plan/Local Coastal Program or by the California Coastal Commission (Coastal Commission). Section 30107.5 of the Coastal Act defines an environmentally sensitive area as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments".

The determination of ESHA on property rests with either the local agency as part of its development and implementation of a Local Coastal Program (LCP) or the Coastal Commission for areas not covered by a certified LCP on a case by case basis. As addressed in the Draft EIR, the City's certified Coastal Land Use Plan (CLUP) identifies Banning Ranch (the Newport Banning Ranch site and the Newport-Mesa Unified School District property) as a Deferred Certification Area (DCA) because a project plan is necessary in order to address land use, public access, and the protection of coastal resources. Neither the City nor the County of Orange has a certified LCP that includes the Newport Banning Ranch site. The City has taken into consideration relevant policies for its General Plan regarding the protection of sensitive resources, and the policies of the Coastal Act in the Draft EIR and provides a consistency analysis of the proposed Project and those policies in Table 4.6-10 of the Draft EIR.

Section 4.6, Biological Resources, of the Draft EIR documents the vegetation communities present on the Project site, including the presence of coastal sage scrub, and has assessed the impacts of the proposed Project on coastal sage scrub and the species that use coastal sage scrub for its habitat needs. For example, please refer to pages 4.6-59 to 4.6-63.

As noted, the determination of ESHA is made on a case-by-case basis taking into consideration site-specific considerations. The fact that the Project site has been designated as Critical Habitat for the coastal California gnatcatcher by the U.S. Fish and Wildlife Service (USFWS) is relevant information with respect to the Project's compliance with the federal Endangered Species Act. However, it is not conclusive evidence that all of the Project site is or should be considered ESHA or that the entire Project identified as Critical Habitat is occupied by the coastal California gnatcatcher. It is important to note that an area designated as Critical Habitat for any species listed by the USFWS is not the same as an area occupied by the species. The USFWS has acknowledged that some areas of Critical Habitat contain non-Primary Constituent Elements (PCEs). "Where possible, the boundaries of final Critical Habitat have been refined to

remove lands containing features such as roads, buildings, and other infrastructure that do not contain the PCEs; however, it was not possible to exclude all such areas from the designation”.<sup>1</sup>

Not all property covered by a Critical Habitat designation supports the listed species nor may it fully satisfy the definition of ESHA under the Coastal Act. Even where property has been identified as Critical Habitat by the USFWS, the Endangered Species Act provides a mechanism through either the Section 7 agency consultation process or the Section 10 incidental take permit process for activities to occur within Critical Habitat that may result in the disturbance or even removal of the habitat so long as appropriate conservation measures, as defined by the USFWS, are implemented. Therefore, the Critical Habitat designation is but one of many components that would be factored into any analysis of ESHA by the Coastal Commission.

Many commenters noted that portions of the Project site had been determined to be ESHA by the Coastal Commission in connection with the approval of Consent Cease and Desist Order No. CCC-11-CD-03 and Consent Restoration Order No. CCC-11-RO-02 (“Consent Orders”) that was entered into among parties including the Coastal Commission, Newport Banning Ranch LLC, and the City in April 2011. The Consent Orders identified 0.67 acre of ESHA on the Project site, located in the area proximate to the City’s proposed Sunset Ridge Park site. However, the Consent Orders limited those findings and stated that the determination of ESHA for those areas “are determinative only as to the Impacted Areas, and shall not be binding on any future coastal development permit or other proceeding before the Coastal Commission on property other than the Impacted Areas”. Therefore, although the Coastal Commission has identified areas of ESHA on the Project site in connection with its action in adopting the Consent Orders, the Coastal Commission has not made an ESHA determination for the remainder of the Newport Banning Ranch Project site, and no conclusions of ESHA can and will be made by the City at this time as part of the EIR process. As stated in the Consent Orders, a separate analysis will be undertaken by the Coastal Commission in connection with any future Coastal Development Permit application or proceeding before the Coastal Commission involving these properties. The fact that the Coastal Commission’s ESHA determinations are based upon site-specific circumstances was reiterated in the Coastal Commission’s comment letter on the Draft EIR. (See Letter S1b, Comment 6.)

As noted by some commenters, the proposed alignment of Bluff Road is within areas that were identified as ESHA by the Coastal Commission in the Consent Orders. The Coastal Commission has not reviewed the Newport Banning Ranch proposal and has not made any recommendations regarding Bluff Road at this time. The Coastal Commission has, however, reviewed the City’s Sunset Ridge Park application which included a park access road in this same area and made recommendations on reconfiguring the entry road to minimize impacts to sensitive coastal resources in a manner that could be found consistent with the Coastal Act and Section 30240 in particular. Since that time, however, the City has revised its application for Sunset Ridge Park.

With respect to the City’s obligations as lead agency, the purpose of an EIR is to analyze the impacts of a proposed project on the physical environment. The Draft EIR analyzes the proposed Project and its impact on biological resources including coastal sage scrub vegetation and the coastal California gnatcatcher; see Section 4.6, Biological Resources, Section 5.0, Cumulative Impacts, and Section 7.0, Alternatives to the Proposed Project. In so doing, the City has fulfilled its obligation under CEQA to analyze the significant impacts of a project on the physical environment. To what extent these areas constitute ESHA – a concept unique to the Coastal Act – is a finding within the discretion of the Coastal Commission, or a local agency as part of its LCP certification process. While the Draft EIR must identify a project’s impact on the

<sup>1</sup> <http://www.gpo.gov/fdsys/pkg/FR-2007-12-12/pdf/07-5972.pdf#page=1>

environment, including biological resources such as sensitive species and sensitive native vegetation, it is not required to make a finding pursuant to the Coastal Act. That would be within the discretion and authority of the Coastal Commission when this Project comes before them.

For other coastal projects, the Coastal Commission has identified a variety of habitats and resources as ESHA which include, but are not limited to, coastal bluff scrub, coastal sage scrub, riparian scrub, freshwater marsh, and habitat occupied by listed species. These habitats and resource, and many others, have been quantified, qualified, and graphically illustrated in the Draft EIR and supporting Biological Technical Report for the proposed Project. This technical information is available to the Coastal Commission for their consideration of ESHA in accordance with the Coastal Act.

## TOPICAL RESPONSE VERNAL POOLS

A number of comments were submitted regarding whether vernal pools occur on the Project site and whether all of these vernal pool features had been described either in the vegetation mapping or in the wetland delineation discussions in Section 4.6, Biological Resources, of the Draft EIR. This topical response responds to those comments.

### **Was A Jurisdictional Delineation Conducted To Identify Wetlands And Jurisdictional Waters? If So, What Methodology Was Used?**

A number of commenters asked whether a wetlands delineation had been prepared in order to identify any wetlands and vernal pools on the Project site. Comments also requested that the delineation of wetlands be conducted using the California Coastal Commission's (Coastal Commission) wetlands definition.

A jurisdictional delineation was prepared for the proposed Project. The delineation identified those areas that would be considered "Waters of the U.S." subject to regulation under the Clean Water Act by the U.S. Army Corps of Engineers (USACE), the delineation identified "non-wetland Waters of the U.S.", and those areas that would be considered wetlands under the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual<sup>2</sup> (Wetland Manual) and the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)<sup>3</sup>. In order to be considered a wetlands under the USACE delineation methodology, the area must exhibit three characteristics: (1) a predominance of plants with a wetland indicator status of Facultative (FAC) or wetter; (2) predominately hydric soils (soils that have formed under periods of prolonged soil saturation); and (3) wetland hydrology, which is defined as sufficient wetness at least every other year (on average) to result in saturated soils with anaerobic conditions.

In addition to conducting a delineation pursuant to the USACE methodology, a delineation was prepared for of "Waters of the State" subject to regulation by the California Department of Fish and Game (CDFG). "Waters of the State" are subject to regulation under Section 1602 of the Fish and Game Code and consist of stream courses, drainages, and associated riparian habitat.

Additionally, because the Project site is within the Coastal Zone, the delineation included identification of wetlands and riparian habitat subject to regulation under the California Coastal Act by the Coastal Commission using a third methodology that is used by the Coastal Commission which is different than the delineation methodology used by the USACE or the CDFG. While the Coastal Commission relies on the methodology set forth in the USCACE manuals referenced above, the Coastal Commission only requires the presence of one of the three characteristics (i.e., a predominance of wetland vegetation; or a predominance of hydric soils; or wetland hydrology). While the Coastal Commission can make a wetland determination based on the presence of a single parameter, it is possible to demonstrate that where wetland hydrology (as defined above) is lacking, areas with a predominance of wetland indicator plants are not considered wetlands. Please see Table 4.6-7 and the related narrative on page 4.6-70 of the Draft EIR.

<sup>2</sup> Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, U.S. Army Engineer Waterways Experimental Station, Vicksburg, Mississippi.

<sup>3</sup> U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

### **Is There A Difference Between A Vernal Pool And Wetland? Are All Vernal Pools Wetlands?**

The definition of wetlands and vernal pools are not necessarily the same. It is possible for an area to be considered to be a vernal pool but not a wetland as defined by the USACE and/or CDFG<sup>45</sup>. Also, not all wetlands are vernal pools. A true vernal pool is a naturally occurring seasonal pond, which in California, fills with water during the winter and spring and typically ponds water because of an aquitard (a shallow occluding layer which prevents percolation of rainfall) and creates conditions where ponding can occur. The regularity that any given vernal pool fills with water and the duration of the ponding varies widely from pool to pool. Because an area ponds water does not mean it is a vernal pool.

Seasonal ponding can occur in a wide variety of landscape features as is the case for all of the features on the Project site. The Project site does not support any natural or “native” vernal pools where ponding is as a result of naturally-formed depressions overlying an aquitard. In the case of the Project site, two areas have been described as “vernal pools” (VP-1 and VP-2). These areas have been formed as a result of previous oilfield activities (VP-1 is the site of a former baseball field that has exhibited minimal subsidence; VP-2 occupies the lowest point on the pad of an active oil well). VP-1, while supporting a very limited amount of vegetation typical of vernal pools, is dominated by mulefat and saltgrass, neither of which is consistent with vernal pool indicator plants.

Other features on the Project site that are considered ephemeral ponds (not vernal pools) have been created by a range of activities such as soil remediation, excavation and associated berming, slight depressions on constructed oil well pads, or other manipulation resulting from human activities. There are additional features on the Project site in which ponding occurs in low spots in paved or unpaved parking lots or paved or unpaved roads; these areas are not considered vernal pools. This variety of ponded conditions on site is described in Table 4.6-2 of the Draft EIR on page 4.6-16 in the “Origin/Function” column. Some areas of ponded water (including vernal pool and non-vernal pool areas) retained water for a sufficient period of time to exhibit the potential for supporting listed fairy shrimp.

As addressed in the Draft EIR, the Project site has seven features which support the San Diego fairy shrimp. Fairy shrimp or their cysts can be transported from one ponded area to another by water fowl, car tires, or the bottom of animal and human feet. Therefore, they can occur in vernal pools or any other area that holds water long enough for the shrimp to reach maturity. One shallow pool area created by a bulldozer scrape does not hold water for sufficient duration for San Diego fairy shrimp to reach maturity, although an immature individual was found at this location.

### **Why Does The EIR Not Acknowledge All Of The Ponded Areas After The Rains Of 2010/2011?**

Given the lack of wetland hydrology, as addressed in the following paragraph, for the majority of the features listed in Table 4.6-2 of the Draft EIR during the normal rainfall years of 2007/2008 and 2008/2009, these areas would not be considered wetlands even under the methodology used by the Coastal Commission.

<sup>4</sup> U.S. Army Corps of Engineers (USACE). 2008. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)*. (J.S. Wakeley, R.W. Lichvar, and C.V. Noble, Eds.). Vicksburg, MS: U.S. Army Engineer Research and Development Center.

<sup>5</sup> California, State of. 2012. *California Fish and Game Code* (Sections 1600–1616, Fish and Wildlife Protection and Conservation). Sacramento, CA: the State. <http://info.sen.ca.gov/cgi-bin/displaycode?section=fgc&group=01001-02000&file=1600-1616>.

Many of these features were identified during the 2010/2011 rainfall season, which accounted for 19.06 inches of rainfall or 189 percent of normal rainfall. October 2010 had 3.71 inches (928 percent of normal for October) and December 2010 had 9.19 inches (647 percent of normal for December and 434 percent cumulative for the season through December 31). Identifying and mapping wetlands under such conditions is not accepted wetland practice as set forth in the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)<sup>6</sup> which states on page 95:

Direct hydrologic observations. Verify that the plant community occurs in an area subject to prolonged inundation or soil saturation during the growing season. This can be done by visiting the site at 2- to 3-day intervals during the portion of the growing season when surface water is most likely to be present or water tables are normally high. Hydrophytic vegetation is considered to be present, and the site is a wetland, if surface water is present and/or the water table is 12 in. (30 cm) or less from the surface for 14 or more consecutive days during the growing season **during a period when antecedent precipitation has been normal or drier than normal.** If necessary, microtopographic highs and lows should be evaluated separately. The normality of the current year's rainfall must be considered in interpreting field results, **as well as the likelihood that wet conditions will occur on the site at least every other year...** (Emphasis added)

In conclusion, because under normal circumstances, these areas would not have sufficient hydrology to exhibit ponding, they would not be considered wetlands.

It must also be noted that the initial mapping of some of the features identified as ponded features occurred in late January 2010 which was also a wetter than normal rainfall year. Mapping was performed during a very wet period, which included 6.91 inches (328 percent of normal for December) in the two weeks preceding the date of many of the photos in the submitted PowerPoint (see discussion below) which resulted from a "flyover" with a camera mounted on a model airplane. Exclusive reliance on photos of after an abnormally heavy rainfall in one isolated period of one year in order to support a delineation would be considered invalid because of the potential for "false positives". The minimum threshold for the presence of wetland hydrology is that any area evaluated and considered to have wetland hydrology must exhibit such conditions in "most" years, generally considered 51/100 years (the excerpt from the USACE's Arid West Supplement states "at least every other year" as the minimum). The methods used and/or referenced by some of the commenters to identify ponded features (i.e., use of a camera mounted on a model airplane) do not reflect the actual conditions of each feature as discussed below. Features identified either by the model airplane-mounted camera or by "on-the-ground" observations were not adequately categorized, with a resulting failure to distinguish between pools in asphalt parking areas, oil sumps, and pools that could potentially exhibit at least limited biological value.

### **Were Surveys Done For The Endangered Fairy Shrimp?**

Comments were also received regarding the survey protocol used to identify the presence/absence of the listed San Diego fairy shrimp.

<sup>6</sup> U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

Surveys were conducted on the seasonally ponded areas for two purposes. First, the ponded areas were surveyed to determine the presence/absence of the San Diego fairy shrimp, a federally listed endangered species. These surveys were performed in accordance with U.S. Fish and Wildlife Service (USFWS) protocol which requires surveys during specific seasons and for a specific number of years. In addition, the seasonally ponded areas were evaluated in terms of whether they could be considered either wetlands or other waters subject to jurisdiction under Section 404 of the Clean Water Act and/or the Coastal Act. The wetland delineation requirements for evaluation of these areas using State and federal requirements were complied with as part of the survey work. (See preceding discussion.)

With respect to the protocol surveys for the San Diego fairy shrimp, surveys for the fairy shrimp species were conducted in 2000 (Glenn Lukos Associates), 2007/2008 (Glenn Lukos Associates), 2008/2009 (Glenn Lukos Associates), 2009/2010 (Glenn Lukos Associates), and 2010/2011 (Glenn Lukos Associates). The 2010/2011 surveys included comprehensive monitoring by biologists from Glenn Lukos Associates who hold USFWS Section 10 permits to conduct surveys for the endangered fairy shrimp to evaluate the presence/absence of wetland indicators; the biological values of the ponded area; and conduct protocol surveys for the San Diego fairy shrimp. Fairy shrimp surveys were conducted according to USFWS survey protocols for all features determined to exhibit potential for supporting listed fairy shrimp. As a result of discussions that included Christine Medak of the USFWS, BonTerra Consulting, and Glenn Lukos Associates, USFWS confirmed that certain ponded depressions submitted in the commenter's PowerPoint (specifically, BRC Features 34, 35 and 36) required no fairy shrimp surveys due to lack of suitable habitat and hydrological indicators.<sup>7</sup> Ms. Medak requested that Feature 39 be surveyed using the USFWS Dry-Season Fairy Shrimp Survey protocol.<sup>8</sup> No fairy shrimp were detected by Glenn Lukos Associates.

All of the areas in which the endangered San Diego fairy shrimp were identified are listed in Table 4.6-2 of the Draft EIR.

### **Has The City Reviewed The 54 Features In The Complete Banning Ranch Mesa PowerPoint?**

One of the commenters has provided the City with a PowerPoint entitled *Complete Banning Ranch Mesa Vernal Pools/Wetlands (First Edition)* dated June 27, 2011 which identified 54 features that were referred to as "vernal pools/wetlands". The City and its biological consultants have reviewed the information and have conducted their own site surveys in an attempt to relocate each of the 54 "features" depicted in the PowerPoint. Many of the features correspond to features that have been subject to the site surveys and delineation work conducted for the Project site, the results of which are discussed in the Draft EIR.

It should be noted that unlike the work conducted by the City's biological consultants, the features referenced in the PowerPoint are not based on protocol surveys but rather are identified by using a camera-mounted model airplane. The failure to adequately distinguish areas in which rainwater collects from jurisdictional waters, such as wetlands or vernal pools, is further evidenced by the fact that those photos submitted in the PowerPoint from on-the-ground locations and which are identified as vernal pools or wetlands are asphalt parking areas, asphalt roads, gravel parking areas, dirt roads, oil well pads, bulldozer scrapes, tire ruts, and oil sumps totally lacking in habitat values. The Draft EIR does not identify such features as vernal pools or a wetlands because they are oilfield features. As discussed above, also of significance is the

<sup>7</sup> U.S. Fish and Wildlife Service. October 28, 2011. Letter to Mike Sinacori Regarding: Request for Technical Assistance for Sunset Ridge Park, City of Newport Beach, Orange County, California.

<sup>8</sup> Email from Christine Medak of U.S. Fish and Wildlife Service to Mike Sinacori at City of Newport Beach. September 14, 2011.



fact that the commenter's photos of the wet areas were taken during the 2010/2011 rainfall season, which accounted for 19.06 inches of rainfall or 189 percent of normal rainfall. It is acknowledged that many areas of the Project site accumulated ponded water because of the amount of rainfall. However, all of these areas are not wetlands, vernal pools, or jurisdictional waters subject to regulation. As noted in the 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)<sup>9</sup>, identifying and mapping wetlands under such conditions is not accepted wetland practice (see excerpt quoted above).

Of the 54 features depicted in the submitted PowerPoint, biologists from Glenn Lukos Associates were able to identify and locate all of the features from on-the-ground survey work. Of the 54 features, 26 were identified and listed in Table 4.6-2 of the Draft EIR. None of the features, even the seven which support the San Diego fairy shrimp are naturally occurring vernal pools. Of the remaining 28 features, 27 were not mapped as vernal pools or wetlands because all 27 are oilfield features that only ponded during the extreme rainfall year of (either) 2009/2010 or 2010/2011 as noted above and none exhibited wetland hydrology during at least every other year as required by the Arid West Supplement (Version 2.0) based on the normal rainfall conditions in 2007/2008 and 2008/2009.

One additional feature, referred to as the Ticonderoga pool occurs in the southwest portion of the Project site. The origin of this feature is not clear although it is suspected that it was created during grading by Caltrans in the 1960s. While this feature was ponded following the 2011 rainfall, it does not pond water during normal rainfall years such as 2007/2008 and 2008/2009 and is not a wetland based on the lack of wetland hydrology. Fairy shrimp were not detected during surveys in 2011 and the feature does not support vegetation diagnostic of vernal pools.

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<sup>9</sup> U.S. Army Corps of Engineers. 2008. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region. Ed. J.S. Wakeley, R.W. Lichevar, and C.V. Noble. ERDC/EL TR-08-28. Vicksburg, MS: U.S. Army Engineer Research and Development Center.

## **TOPICAL RESPONSE MOWING AND FUEL MODIFICATION**

Commenters have referred to “illegal mowing” that has occurred on the Project site. As discussed at Section 3.0, Project Description, of the Draft EIR, the Project site is an operating oilfield and regular maintenance of the property has occurred since the beginning of oil operations in the 1940s in order to ensure the safe production of oil resources on the site, and in accordance with the California Department of Oil, Gas and Geothermal Resources (DOGGR) regulatory requirements. The oil operations on the property are under the control and management of West Newport Oil Company (WNOC) which also holds the right to extract the subsurface oil resources. The ownership of the subsurface mineral rights and the ability to extract the oil resources should be distinguished from the rights of the Project Applicant, Newport Banning Ranch LLC, which has an option to develop the surface of the site.

The mowing of the property is undertaken by the oil operator and has occurred as part of its ongoing, routine maintenance of the oilfield. It is not considered “illegal” as no law prohibits oilfield maintenance activities. In 1973, the oilfield operations received a Resolution of Exemption from the California Coastal Commission’s (Coastal Commission) predecessor agency that was formed after the voters of the State passed Proposition 20, the California Coastal Zone Conservation Commission, South Coast Region. The Resolution of Exemption granted to the oilfield operator (General Crude Oil & G.E. Kadane & Sons) a claim for exemption acknowledging that certain identified development required no permit from the Coastal Commission. The activities that were identified as not requiring a permit included the “Continued operation and maintenance of existing oil producing and injection wells and associated surface facilities”. Continued operation and maintenance in accordance with oilfield maintenance practices includes mowing and trimming of vegetation around oil facilities.

In accordance with DOGGR regulations and best management practices for oilfield operations and maintenance, the oil operator must maintain clear and safe access to all these areas to ensure ongoing and future production and eventual closure operations can be conducted safely. In addition to maintaining unobstructed visibility of the ongoing operation, overall site security and wildfire protection/prevention are key elements of the program. Oilfield surveillance and ready access is necessary to provide rapid response capabilities to address potential equipment failures, pipeline leaks, and any other emergency conditions. In addition to surveillance and visibility issues, uncontrolled dry vegetation presents fire risks from normal oil and gas work operations, which involve combustible materials, repair and maintenance activities, and truck and heavy equipment activity.

Because oilfield maintenance requires that pipelines and well pads and other oilfield facilities and production equipment be kept clear of vegetation in order to minimize the risk of fire, and to monitor for spills or other hazardous situations, the immediate area surrounding these facilities are mowed or vegetation is hand-trimmed to create a fire break and provide visibility for oilfield personnel to monitor these facilities for potential spills or other equipment problems. DOGGR regulations require that oilfield operators be able to visually inspect for the facilities to protect against leaks and corrosion in order to safeguard life, health, property, and natural resources. Maintenance of production facilities includes the removal of weeds and debris from secondary containment areas or catch basins, and the removal of fluids, including rainwater. Vehicle access routes to all production facilities must also be maintained in a safe and passable condition.

In addition to the oilfield maintenance, areas of the Project site are mowed for fuel modification to provide a “fire break” between developed areas (e.g., the adjacent residences) and the oilfield. Because of the oilfield is a potential area in which wildfires could occur, in addition to the

overall maintenance program, a 100-foot-wide fuel modification area is provided between the oilfield and adjacent off-site development to minimize the risk of a wildfire spreading to the adjacent developed areas. Wildfires have occurred in the past on the Project site. Therefore, both the City of Newport Beach Fire Department and the Orange County Fire Authority have stressed the importance of minimizing the public safety risks and oilfield hazards that could result from a wildfire spreading through the oilfield and neighboring properties by ensuring that areas are mowed. As an example, the Orange County Talbert Nature Preserve has historically supported a transient person population that has resulted in fires which have spread onto the West Newport Oilfield site and caused damage to electrical lines and posed a threat to oilfield facilities.

Although the majority of the areas that are mowed for oilfield maintenance and fuel modification are non-native grassland, the Project site does provide habitat for the listed California gnatcatcher and other federally-listed species. Any “take” of those species would be in violation of the Endangered Species Act (ESA). Consequently, all oilfield maintenance activities are conducted to ensure that they do not violate the ESA or the Clean Water Act, or remove habitat subject to regulation under the Fish and Game Code. With respect to the Clean Water Act and Fish and Game Code, no vegetation clearing occurs in the three arroyos and no riparian vegetation is removed. The riparian vegetation in the three arroyos has not been subject to maintenance in the recent past. No maintenance in these areas is proposed due in part to the lack of pipelines within the riparian vegetation and the topography. The Lowland area is not mowed and is only subject to limited hand clearing to maintain active pipeline corridors on an as-needed basis. Clearing in the Lowland is performed outside the avian nesting season (March 15-August 31) for those species within the Lowland area. If any maintenance is required in these areas after March 15, it is performed only after a biological monitor has surveyed the area to ensure that no nests are removed or adversely affected.

With respect to the procedures that have been employed to guard against “take” of a listed species pursuant to the ESA, the following steps have been taken. First, prior to commencement of the first mowing, a biological monitor would review all areas that would be mowed or cleaned up. Second, the biological monitor would the procedures for maintenance activities with the oil operator, including the following:

- Weed clearing from pipeline corridors (physical removal or spraying) is restricted to months outside of the bird nesting season ((February 15 to July 15 for the coastal California gnatcatcher; March 15 to August 31 for other avian species) and only in areas reviewed by the biological monitor;
- Areas in which mowing or maintenance work is restricted until outside of the bird nesting season are designated by the biological monitor;
- During the bird nesting season, mowing is only conducted in areas subject to pre-mowing nesting bird surveys by the biological monitor and determined to not have nesting birds (i.e., “cleared areas”);
- Any areas in which the San Diego fairy shrimp has recently been identified are delineated by the biological monitor, and mowing or other maintenance in those areas is prohibited; and
- Maintenance of areas potentially occupied by least Bell’s vireo is restricted to periods outside the breeding season (March 15 – August 31).

The site maintenance practice over the last 60 years has been to mow most open grass and weedy areas at least two times per year depending upon the seasonal rainfall, and to

periodically clear vegetative growth along oil pipelines, gas pipelines, and well pad areas throughout the oilfield. The pipeline clearing is done only by hand removal.

## TOPICAL RESPONSE AIR QUALITY

### A. NITROGEN OXIDES (NO<sub>x</sub>)

Comments regarding nitrogen oxides (NO<sub>x</sub>) included (1) the availability of Tier 4 construction equipment; (2) health risks to local residents and children and adults exercising in nearby parks; and (3) suggestions that remediation and grading operations should not occur concurrently. Responses are addressed in the following paragraphs and are preceded by the results of an update to the construction emissions methodology.

#### **Revised Construction Emissions**

The Draft EIR forecasts that the peak day construction nitrogen oxides (NO<sub>x</sub>) mass emissions, without mitigation, would exceed the South Coast Air Quality Management District (SCAQMD) CEQA guidance threshold in the years 2014 through 2017 and 2019. The analysis also showed that the use of all Tier 3 construction equipment would not reduce the emissions to a less than significant level. Subsequent to preparation of the construction emissions analysis contained in the Draft EIR, the California Air Resources Board (CARB) released new data relative to construction equipment emissions as part of the updated modeling package OFFROAD 2011. (The CalEEMod model uses data from OFFROAD 2007). The data suggested that load factors, that is, the average operational level of an engine in a given application as a fraction or percentage of the engine manufacturer's maximum rated horsepower, would be reduced by 33 percent. This general estimate was further refined into a table of revised load factors for specific types of equipment.

The Newport Banning Ranch construction emissions analysis was recalculated using the revised load factors. The results show (1) unmitigated NO<sub>x</sub> emissions would be less than shown in the Draft EIR but the 100 pound per day threshold for maximum daily emissions would be exceeded in the years 2014 through 2017; and (2) emissions with all Tier 3 equipment would not exceed the 100 pound per day threshold in any of the construction years. Emissions for year 2019 with Tier 3 equipment are estimated at 100 pounds per day. Mitigation Measure (MM) 4.10-1 requires that all off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 3 off-road emissions standards and after January 1, 2015 all off-road diesel-powered construction equipment greater than 50 horsepower (hp) shall meet Tier 4 off-road emissions standards. With the incorporation of MM 4.10-1, construction-related NO<sub>x</sub> would be mitigated to a less than significant impact.

The impact summary is revised and incorporated into the Final EIR as follows:

Without mitigation, regional (mass) emissions of NO<sub>x</sub> are forecasted to exceed applicable thresholds in some construction years. MM 4.10-1 would reduce the emissions to less than significant. ~~However, the availability of sufficient Tier 4 diesel engine construction equipment cannot be assured; thus the impact is potentially significant and unavoidable.~~

Revised Tables 4.10-7 and 4.10-8 have been revised and are incorporated into the Final EIR as follows:

**TABLE 4.10-7 (REVISED MARCH 2012)  
ESTIMATED MAXIMUM DAILY  
CONSTRUCTION EMISSIONS: UNMITIGATED<sup>a</sup>**

Year	VOC	NOx	CO	SOx	PM10	PM2.5
2014	<u>20 13</u>	<u>157 107</u>	<u>93 64</u>	<0.5	44	<u>11 9</u>
2015	<u>29 22</u>	<u>178 127</u>	<u>123 130</u>	<0.5	<u>48 57</u>	<u>13 11</u>
2016	<u>25 19</u>	<u>145 104</u>	<u>108 116</u>	<0.5	<u>29 39</u>	<u>10 8</u>
2017	<u>31 26</u>	<u>165 125</u>	<u>151 175</u>	<0.5	<u>37 55</u>	<u>11 10</u>
2018	<u>27 12</u>	<u>82 61</u>	87	<0.5	<u>15 20</u>	5
2019	<u>32 19</u>	<u>103 82</u>	<u>128 142</u>	<0.5	<u>22 36</u>	6
2020	<u>17 14</u>	<u>53 48</u>	<u>87 111</u>	<0.5	<u>17 32</u>	3
2021	<u>12 6</u>	<u>25 22</u>	<u>45 53</u>	<0.5	<u>9 16</u>	1
2022	<u>11 6</u>	<u>23 20</u>	<u>44 51</u>	<0.5	<u>9 16</u>	1
2023	<u>11 6</u>	<u>22 19</u>	<u>42 49</u>	<0.5	<u>9 16</u>	1
SCAQMD Thresholds (Table 4.10-6)	75	100	550	150	150	55
Exceed Threshold?	No	Yes	No	No	No	No
VOC: volatile organic compounds; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: particulate matter 10 microns or less in diameter; PM2.5: particulate matter 2.5 microns or less in diameter. Notes: Detailed data in Appendix G.						
<sup>a</sup> In pounds per day						

**TABLE 4.10-8 (REVISED MARCH 2012)  
ESTIMATED MAXIMUM DAILY  
CONSTRUCTION EMISSIONS: MITIGATED – TIER 3 CONSTRUCTION  
EQUIPMENT<sup>a</sup>**

Year	VOC	NOx	CO	SOx	PM10	PM2.5
2014	<u>8 9</u>	<u>42 59</u>	<u>93 67</u>	<0.5	<u>40 41</u>	<u>7 8</u>
2015	17	<u>60 82</u>	<u>128 136</u>	<0.5	<u>43 57</u>	<u>8 10</u>
2016	16	<u>57 73</u>	<u>118 124</u>	<0.5	<u>26 39</u>	<u>7 9</u>
2017	<u>21 24</u>	<u>83 100</u>	<u>165 186</u>	<0.5	<u>34 49</u>	<u>8 11</u>
2018	<u>23 12</u>	<u>44 53</u>	<u>95 93</u>	<0.5	<u>13 21</u>	<u>4 5</u>
2019	<u>28 20</u>	<u>68 79</u>	<u>139 150</u>	<0.5	<u>22 38</u>	<u>6 8</u>
2020	<u>17 15</u>	<u>48 51</u>	<u>92 114</u>	<0.5	<u>18 33</u>	<u>3 4</u>
2021	<u>11 7</u>	<u>24 25</u>	<u>47 55</u>	<0.5	<u>10 17</u>	2
2022	<u>11 7</u>	<u>24 25</u>	<u>46 53</u>	<0.5	<u>10 17</u>	2
2023	<u>11 7</u>	<u>23 24</u>	<u>45 51</u>	<0.5	<u>10 17</u>	2
SCAQMD Thresholds (Table 4.10-6)	75	100	550	150	150	55
Exceed Threshold?	No	No	No	No	No	No
VOC: volatile organic compounds; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: particulate matter 10 microns or less in diameter; PM2.5: particulate matter 2.5 microns or less in diameter. Notes: Detailed data in Appendix G.						
<sup>b</sup> In pounds per day						

### **Tier 4 Equipment**

The original air quality analysis, described above, determined that there would be a significant and unavoidable impact for construction NOx emissions because approximately 50 percent Tier 4 construction equipment would be required to mitigate to a level less than significant and availability of that quantity of construction equipment could not be assured. Comment on the Draft EIR suggested a mandatory mitigation measure for least 50 percent Tier 4 equipment. Based on the revised emissions analysis described above, Tier 4 equipment is not required to reduce forecasted emissions to a less than significant level. Therefore, no revision of MM 4.10-1 is required. It is further noted that, based upon further inquiries to contractors, the City has determined that it would be reasonable to expect that Tier 4 equipment would be available after January 2015 and that, as required by MM 4.10-1, would be included in the Project construction equipment inventory.

### **Local Impacts**

The local impacts of construction NOx emissions, as well as those of other pollutants, were analyzed separately from the mass emissions and are described in Table 4.10-9 of the Draft EIR and accompanying narrative. Table 4.10-9 shows the on-site NOx emissions of 170 pounds per day to be less than the SCAQMD threshold of 197 pounds per day. With all Tier 3 construction equipment, as required by MM 4.10-1, the maximum on-site NOx emissions are calculated to be 90 pounds per day, which is less than 46 percent of the applicable threshold. Therefore, the local impact of construction NOx emissions would be less than significant.

### **Phasing of Construction Operations**

A number of commenters suggested that remediation and grading operations should not occur concurrently to reduce construction emissions to a less than significant level. As described above, Revised Construction Emissions, with the incorporation of MM 4.10-1 construction emissions would be less than significant, as described in the previous paragraph. Therefore, there would be no need to change the plan for concurrent construction operations. Prohibiting remediation and grading activities to overlap would only extend the timeframe associated with Project site disturbance.

## **B. OPERATIONAL POLLUTANT EMISSIONS**

### **Location of Pollutant Sources**

Many commenters express concern about the health effects to residents of Newport Crest, users of the proposed parks, and students at local schools as a result of the forecasted significant impact for volatile organic compounds (VOC) and carbon monoxide (CO) emissions after 2020. It is noted that vehicles would produce more than 75 percent of these emissions and most of the vehicle emissions would not occur on the Project site but on roadways between the site and places of work and shopping, and at other off-site locations. Therefore, there is little relationship between mass emissions attributable to Project operations and exposure to persons on site and nearby off site. Exposure of persons to excessive concentrations of long-term vehicle CO emissions is investigated at severely congested signalized intersections; the analysis in the Draft EIR demonstrates a less than significant impact.

## **C. HEALTH EFFECTS**

Some commenters requested additional descriptions of the potential health effects of criteria pollutants and toxic air contaminants. The following information is provided.

## **Criteria Pollutants and Associated Health Effects**

The United States Environmental Protection Agency (USEPA) and the State of California Air Resources Board (CARB) have established National Ambient Air Quality Standards (NAAQS) and California Ambient Air Quality Standards (CAAQS), respectively, for seven major pollutants. A brief explanation of each criteria pollutant and its health effects is presented below.

### **Ozone (O<sub>3</sub>)**

Ozone is a secondary pollutant; it is not directly emitted, but is the result of chemical reactions between volatile organic compounds (VOC) (also referred to as reactive organic gases [ROG]) and nitrogen oxides (NO<sub>x</sub>), which occur only in the presence of bright sunlight. VOC/ROG emissions are generally unburned hydrocarbons that are a result of motor vehicle travel and other combustion sources. Nitrogen oxides are also a result of the combustion process, most notably due to the operation of motor vehicles. Sunlight and hot weather cause ground-level O<sub>3</sub> to form. (Ground-level O<sub>3</sub> is not to be confused with the “ozone layer” which occurs very high in the atmosphere and shields the planet from some ultraviolet [UV] rays.) As a result, O<sub>3</sub> is known as a summertime air pollutant. Ground-level O<sub>3</sub> is the primary constituent of smog. Because O<sub>3</sub> is formed in the atmosphere, high concentrations can occur in areas well away from sources of its constituent pollutants.

People with lung disease, children, older adults, and people who are active can be affected when O<sub>3</sub> levels are unhealthy. Numerous scientific studies have linked ground-level O<sub>3</sub> exposure to a variety of problems, including:

- lung irritation that can cause inflammation much like a sunburn;
- wheezing, coughing, pain when taking a deep breath, and breathing difficulties during exercise or outdoor activities;
- permanent lung damage to those with repeated exposure to ozone pollution; and
- aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis.

Ground-level O<sub>3</sub> can have detrimental effects on plants and ecosystems. These effects include:

- interfering with the ability of sensitive plants to produce and store food, making them more susceptible to certain diseases, insects, other pollutants, competition, and harsh weather;
- damaging the leaves of trees and other plants, negatively impacting the appearance of urban vegetation, national parks, and recreation areas; and
- reducing crop yields and forest growth, potentially impacting species diversity in ecosystems.

### **Particulate Matter (PM<sub>10</sub> and PM<sub>2.5</sub>)**

Particulate matter includes both aerosols and solid particles of a wide range of size and composition. Of particular concern are those particles smaller than 10 microns in size (PM<sub>10</sub>) and smaller than or equal to 2.5 microns (PM<sub>2.5</sub>). Particulate matter size refers to the aerodynamic diameter of the particulate. Smaller particulates are of greater concern because they can penetrate deeper into the lungs than large particles.



PM10 is generally emitted directly as a result of mechanical processes that crush or grind larger particles or from the re-suspension of dusts most typically through construction activities and vehicular travels. PM10 generally settles out of the atmosphere rapidly and is not readily transported over large distances.

PM2.5 is directly emitted in combustion exhaust and formed from atmospheric reactions between various gaseous pollutants including nitrogen oxides (NOx), sulfur oxides (SOx), and VOCs. PM2.5 can remain suspended in the atmosphere for days and/or weeks and can be transported long distances.

The principal health effect of airborne particulate matter is on the respiratory system. According to the USEPA, some people are much more sensitive than others to breathing fine particles (PM10 and PM2.5). People with influenza, chronic respiratory and cardiovascular diseases, and the elderly may suffer worsening illness and premature death due to breathing these fine particles. People with bronchitis can expect aggravated symptoms from breathing in fine particles. Children may experience decline in lung function due to breathing in PM10 and PM2.5. Other groups considered sensitive are smokers and people who cannot breathe well through their noses. Exercising athletes are also considered sensitive, because many breathe through their mouths.

Short-term exposures to high PM2.5 levels are associated with premature mortality and increased hospital admissions and emergency room visits. Long-term exposures to high PM2.5 levels are associated with premature mortality and development of chronic respiratory disease. Short-term exposures to high PM10 levels are associated with hospital admissions for cardiopulmonary diseases, increased respiratory symptoms, and possible premature mortality. The USEPA has concluded that available evidence does not suggest an association between long-term exposure to PM10 at current ambient levels and health effects.

Particulate matter tends to occur primarily in the form of fugitive dust. In Orange County in 2010, the primary sources of PM10 and PM2.5 were paved road dust and construction and demolition.

Ultrafine particles (UFP or PM0.1), which are particulate matter less than or equal to 0.1 micron in size, are also considered an important contributor to cardiovascular and respiratory diseases. As compared with PM10 and PM2.5, UFP have a higher carbon content, larger total surface area, and greater potential for carrying toxic compounds. Because of their small size, these particles can be inhaled deeply into the lung and deposited in the alveoli (smallest sacs) of the lung. Diesel exhaust is a source of UFP. UFP is not a criteria pollutant, and there are no ambient air quality standards for UFP.

### **Carbon Monoxide (CO)**

Carbon monoxide is a colorless and odorless gas which, in the urban environment, is associated primarily with the incomplete combustion of fossil fuels in motor vehicles. Carbon monoxide combines with hemoglobin in the bloodstream and reduces the amount of oxygen that can be circulated through the body. High carbon monoxide concentrations can lead to headaches, aggravation of cardiovascular disease, and impairment of central nervous system functions. Carbon monoxide concentrations can vary greatly over comparatively short distances. Relatively high concentrations are typically found near crowded intersections, along heavily used roadways carrying slow-moving traffic, and at or near ground level. Even under the most severe meteorological and traffic conditions, high concentrations of carbon monoxide are limited to locations within a relatively short distance (i.e., up to 600 feet or 185 meters) of heavily traveled roadways. Overall carbon monoxide emissions are decreasing as a result of the

Federal Motor Vehicle Control Program, which has mandated increasingly lower emission levels for vehicles manufactured since 1973.

### **Nitrogen Dioxide (NO<sub>2</sub>)**

Nitrogen gas, normally relatively inert (unreactive), comprises about 80 percent of the air. At high temperatures (i.e., in the combustion process) and under certain other conditions it can combine with oxygen to form several different gaseous compounds collectively called nitrogen oxides (NO<sub>x</sub>). Nitric oxide (NO) and nitrogen dioxide (NO<sub>2</sub>) are the two most important compounds. Nitric oxide is converted to nitrogen dioxide in the atmosphere. Nitrogen dioxide (NO<sub>2</sub>) is a red-brown pungent gas. Motor vehicle emissions are the main source of NO<sub>x</sub> in urban areas.

Nitrogen dioxide is toxic to various animals as well as to humans. Its toxicity relates to its ability to form nitric acid with water in the eyes, lungs, mucus membranes, and skin. In animals, long-term exposure to nitrogen oxides increases susceptibility to respiratory infections lowering their resistance to such diseases as pneumonia and influenza. Laboratory studies show that susceptible humans, such as asthmatics, who are exposed to high concentrations of NO<sub>2</sub> can suffer lung irritation and, potentially, lung damage. Epidemiological studies have also shown associations between NO<sub>2</sub> concentrations and daily mortality from respiratory and cardiovascular causes and with hospital admissions for respiratory conditions.

NO<sub>x</sub> is a combination of primarily NO and NO<sub>2</sub>. While the NAAQS and CAAQS only address NO<sub>2</sub>, the total group of nitrogen oxides is of concern. NO and NO<sub>2</sub> are both precursors in the formation of O<sub>3</sub> and PM<sub>2.5</sub>. Because of this and the fact that NO emissions largely convert to NO<sub>2</sub>, NO<sub>x</sub> emissions are typically examined when assessing potential air quality impacts.

### **Sulfur Dioxide (SO<sub>2</sub>)**

Sulfur oxides (SO<sub>x</sub>) constitute a class of compounds of which sulfur dioxide (SO<sub>2</sub>) and sulfur trioxide (SO<sub>3</sub>) are of greatest importance. Ninety-five percent of pollution-related SO<sub>x</sub> emissions are in the form of SO<sub>2</sub>. SO<sub>x</sub> emissions are typically examined when assessing potential air quality impacts of SO<sub>2</sub>. The primary contributor of SO<sub>x</sub> emissions is fossil fuel combustion for generating electric power. Industrial processes, such as nonferrous metal smelting, also contribute to SO<sub>x</sub> emissions. SO<sub>x</sub> is also formed during combustion of motor fuels. However, most of the sulfur has been removed from fuels, greatly reducing SO<sub>x</sub> emissions from vehicles.

SO<sub>2</sub> combines easily with water vapor, forming aerosols of sulfurous acid (H<sub>2</sub>SO<sub>3</sub>), a colorless, mildly corrosive liquid. This liquid may then combine with oxygen in the air, forming the even more irritating and corrosive sulfuric acid (H<sub>2</sub>SO<sub>4</sub>). Peak levels of SO<sub>2</sub> in the air can cause temporary breathing difficulty for people with asthma who are active outdoors. Longer-term exposures to high levels of SO<sub>2</sub> gas and particles cause respiratory illness and aggravate existing heart disease. SO<sub>2</sub> reacts with other chemicals in the air to form tiny sulfate particles which are measured as PM<sub>2.5</sub>.

### **Lead**

Lead is a stable compound, which persists and accumulates both in the environment and in animals. In humans, it affects the body's blood forming (or hematopoietic), nervous, and renal systems. In addition, lead has been shown to affect the normal functions of the reproductive, endocrine, hepatic, cardiovascular, immunological, and gastrointestinal systems, although there is significant individual variability in response to lead exposure. Since 1975, lead emissions have been in decline due in part to the introduction of catalyst-equipped vehicles, and the

decline in the production of leaded gasoline. In general, an analysis of lead emissions and impacts is limited to projects that emit significant quantities of the pollutant (e.g., lead smelters, battery manufacturers, and battery recyclers) and is not applied to residential, commercial, or transportation development projects.

### **Toxic Air Contaminants and Health Risks**

Toxic air contaminants (TACs) emitted from mobile and stationary sources must be taken into consideration for projects proposing new sources of TAC emissions or proposing development near existing sources of TAC emissions. TACs are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. There are almost 200 compounds that have been designated as TACs in California. Some of these TACs are groups of compounds which contain many individual substances (e.g., copper compounds, polycyclic aromatic compounds). The ten TACs posing the greatest known health risk in California, based primarily on ambient air quality data are acetaldehyde, benzene, 1,3-butadiene, carbon tetrachloride, hexavalent chromium, para-dichlorobenzene, formaldehyde, methylene chloride, perchloroethylene, and diesel particulate matter (diesel PM).

Proposed non-residential land uses with stationary equipment that emit TACs generally require permits from regulatory agencies, and a Human Health Risk Assessment (HHRA) of project emissions is a requirement under the permitting process. Proposed non-residential land uses that would result in a long-term substantial increase in mobile TAC emissions (e.g., diesel emissions from vehicles at a distribution center or bus terminal) also require the preparation of an HHRA. The HHRA evaluates the risks posed to sensitive receptors (e.g., residents, schools, hospitals, and parks) in the vicinity of proposed TAC source(s) and must not exceed significance thresholds. Significance thresholds have been established in terms of cancer risk and hazard index.

Carcinogenic risks (i.e., cancer risks) are estimated as the incremental probability that an individual will develop cancer over a lifetime as a direct result of exposure to potential carcinogens (USEPA 1989). The estimated risk is expressed as a probability (e.g., 10 in 1 million). Hazard indices (HIs), which are measured in decimal notation (e.g., 0.001), express the potential for chemicals to result in non-cancer health impacts, and non-carcinogenic chemicals should not be present at levels expected to cause adverse health effects (i.e., HI greater than one). A brief explanation of each of the six TACs with the highest health risks in the SoCAB and their potential health effects, as described by the USEPA and CARB, is presented below.

### **Diesel Particulate Matter**

Diesel particulate matter (diesel PM) is part of a complex mixture that makes up diesel exhaust emitted from a broad range of diesel engines, including the on-road diesel engines of trucks, buses, and cars, and the off-road diesel engines that include locomotives, marine vessels, and heavy duty equipment. Diesel exhaust is composed of gas and particles. The gas phase is composed of many urban hazardous air pollutants, such as acetaldehyde, benzene, and formaldehyde. The particle phase includes categories of fine and ultrafine particles that, when inhaled, can cause immunological effects including lung inflammation and cellular changes in the lung. Based upon human and laboratory studies, there is considerable evidence that diesel exhaust is a likely carcinogen. Human epidemiological studies demonstrate an association between diesel exhaust exposure and increased lung cancer rates in occupational settings. In 1998, the California Office of Environmental Health Hazard Assessment (OEHHA) listed diesel PM as a TAC based on its potential to cause cancer and other adverse health effects. Under

California regulatory guidelines, diesel exhaust, as a mixture, is identified by the State of California as a known carcinogen.

### **1,3-Butadiene**

CARB identified 1,3-butadiene as a TAC in 1992. In addition to being a carcinogen, 1,3-butadiene vapors are mildly irritating to the eyes and mucous membranes and cause neurological effects at very high levels. Most of the emissions of 1,3-butadiene are from incomplete combustion of gasoline and diesel fuels. Mobile sources account for approximately 53 percent of the total statewide emissions. Approximately 26 percent of the statewide 1,3-butadiene emissions can be attributed to on-road motor vehicles, with an additional 27 percent attributed to other mobile sources such as recreational boats, off-road recreational vehicles, and aircraft. Area-wide sources such as agricultural waste burning, open burning associated with forest management, and woodstoves and fireplaces contribute approximately 21 percent. Stationary sources contribute less than one percent of the statewide 1,3-butadiene emissions. The primary natural sources of 1,3-butadiene emissions are wildfires.#

### **Benzene**

Benzene is found in the air from emissions from burning coal and oil, gasoline service stations, and motor vehicle exhaust. Acute inhalation exposure of humans to benzene may cause drowsiness, dizziness, headaches, as well as eye, skin, and respiratory tract irritation, and, at high levels, unconsciousness. Chronic inhalation exposure has caused various disorders in the blood, including reduced numbers of red blood cells and aplastic anemia. Reproductive effects have been reported for women exposed by inhalation to high levels, and adverse effects on the developing fetus have been observed in animal tests. Increased incidence of leukemia (cancer of the tissues that form white blood cells) has been observed in humans occupationally exposed to benzene. The USEPA has classified benzene as a human carcinogen.

### **Formaldehyde**

Formaldehyde is used mainly to produce resins used in particleboard products and as an intermediate in the synthesis of other chemicals. Exposure to formaldehyde may occur by breathing contaminated indoor air, tobacco smoke, or ambient urban air. Acute and chronic inhalation exposure to formaldehyde in humans can result in respiratory symptoms and eye, nose, and throat irritation. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. The USEPA considers formaldehyde a probable human carcinogen.

### **Carbon Tetrachloride**

CARB identified carbon tetrachloride as a TAC in 1987 under California's TAC program (AB 1807). In addition to being a carcinogen, carbon tetrachloride is also a central nervous system depressant and mild eye and respiratory tract irritant. The primary stationary sources reporting emissions of carbon tetrachloride include chemical and allied product manufacturers and petroleum refineries. In the past, carbon tetrachloride was used for dry cleaning and as a grain-fumigant. Usage for these purposes is no longer allowed in the United States. Carbon tetrachloride has not been registered for pesticidal use in California since 1987. Also, the use of carbon tetrachloride in products to be used indoors has been discontinued in the United States.

## **Hexavalent Chromium**

Hexavalent chromium was identified as a TAC in 1986 under California's TAC program (AB 1807). There is epidemiological evidence that exposure to inhaled hexavalent chromium may result in lung cancer. The principal acute effects of hexavalent chromium are renal toxicity, gastrointestinal hemorrhage, and intravascular hemolysis. Chrome plating is no longer the primary source of hexavalent chromium emissions in the State. Hexavalent chromium emissions from plating have declined significantly due to many platers switching to the use of trivalent chromium in place of hexavalent chromium. Chromic acid anodizing is another industrial metal finishing process which uses hexavalent chromium. A third source of hexavalent chromium emissions is the firebrick lining of glass furnaces.

## **TOPICAL RESPONSE**

### **INFILTRATION FEASIBILITY AND LOW IMPACT DEVELOPMENT FEATURES**

The 2011 Model Water Quality Management Plan (WQMP) defines Low Impact Development (LID) Best Management Practices (BMPs) as “a BMP that provides retention or biotreatment as part of an LID strategy; these may include hydrologic source controls (HSCs), retention, and biotreatment BMPs”. The updated MS4 Permit for North Orange County (Order No. R8-2009-0030) requires the evaluation and use of LID features using the following hierarchy of treatment: infiltration, evapotranspiration, harvest/reuse, and biotreatment. A Preliminary WQMP consistent with the technical study included in the Draft EIR has been prepared and is incorporated into the Final EIR; please see Appendix A to this Responses to Comments document, and includes the following preliminary assessments regarding infiltration feasibility, evapotranspiration, harvest/use, and biotreatment.

According to the 2011 Countywide Model WQMP adopted by the Santa Ana Regional Water Quality Control Board (RWQCB) on May 19, 2011, infiltration of runoff is considered infeasible if the seasonally high groundwater level is less than 10 feet below the designed bottom of the infiltration facility (typically 3 to 5 feet below ground surface); in areas with existing soil or groundwater contamination; where Hydrologic Soil Group D soils are present on site; or where infiltration of storm water would increase risks of geotechnical hazards such as slope failures or liquefaction. In addition, infiltration is considered infeasible where the measured infiltration rate of the soil is less than 0.3 inch per hour.

Based on a review of on-site geotechnical conditions, infiltration in the Upland Mesa portions of the Project site would be limited due to slope stability concerns with the adjacent bluffs and presence of bedrock within the proposed areas of development. Within this portion of the Project site, the upper soils (ranging from 1 to 2 feet to 10 feet in thickness) generally consist of silty to sandy clays (Type D soils) with low infiltration rates. These soils are underlain by marine terrace deposits (Group A soils). Although the permeability of these soils may be higher, the marine terrace deposits are underlain by San Pedro formation bedrock, which consists of moderately cemented silty stones and clayey siltstones generally categorized as impervious. The presence of the bedrock layer below the marine terrace deposits may cause infiltrated runoff to become “perched” on top of the bedrock, and flow towards the slope face (see exhibits attached to Preliminary WQMP; Appendix A to this Responses to Comments document) causing local slope instability. This phenomenon is recognized by the City of Newport Beach, and infiltration on development areas adjacent to coastal bluffs is limited within the City. As a result, infiltration is not recommended in the Upland Mesa portions of the site were development areas are proposed.

Within the Lowland area, soils are generally composed of alluvial deposits granular in nature (i.e., Group A soils). However, there are areas which are capped with a zone containing lenses of finer grained sandy silts to silty clays (Group B to D soils). The groundwater is largely within a few feet of mean sea level (roughly 5 to 10 feet below existing topographic grade), which may also limit the feasibility of infiltration at these locations. For other areas of the Project site including the Lowland, site-specific studies on infiltration rates and depths to groundwater would be required to determine feasibility within these areas in accordance with the criteria in the 2011 Model WQMP.

Therefore, the overall approach for water quality treatment as outlined in the Preliminary WQMP includes the use of biotreatment LID features in lieu of infiltration features for the on-site development areas, consistent with the requirements of the MS4 Permit and 2011 Model WQMP. The biotreatment features (water quality basins and landscaped biocells) would be designed with perforated subdrains that collect treated runoff prior to discharging into the

backbone storm drain system. The larger detention basin in the Lowland area would function primarily for storm water detention; however it would also provide some indirect water quality benefits prior to discharge into the Lowland.

A Final WQMP (in accordance with the approved Model WQMP) would be submitted as part of the Coastal Development Permit application to the California Coastal Commission, including an evaluation to determine the extent of incidental infiltration within the biotreatment design that may be suitable on site. The Final WQMP would also include details of all LID features, including any infiltration features and biotreatment systems, associated treatment volumes and operations and maintenance responsibilities in accordance with the requirements of the MS4 Permit and Countywide Model WQMP.

**TOPICAL RESPONSE  
IRRIGATION, LANDSCAPE DESIGN,  
AND COMMON AREA LANDSCAPE MANAGEMENT**

Restoration of open space areas of the Project would incorporate a native plant palette established for each Habitat Restoration Zone as identified in the Newport Banning Ranch Habitat Restoration Plan which is included as Appendix A of the Newport Banning Ranch Master Development Plan.

Landscaping and irrigation systems within the public and common areas of the proposed development area of the Project would be designed to incorporate water-conserving materials and technologies. The Newport Banning Ranch Planned Community Development Plan (NBR-PC) and the Master Development Plan include requirements for these areas of the Project to comply with the following City of Newport Beach adopted water conservation ordinances:

- NBMC Chapter 14.16, Water Conservation and Supply Level Regulations
- NBMC Chapter 14.17, Water Efficient Landscaping

In addition, within all homeowners association (HOA) private common areas and HOA maintained public areas, irrigation systems would be required to use “Smart Controller” irrigation systems and landscaping is required to be designed on a “hydrozone” basis to group plants according to its water and sun exposure requirements.

All landscaping within the Project site would be required to comply with the Master Landscape Plan approved as part of the Master Development which incorporates by reference a Master Plant Palette, Appendix C to the Master Development Plan. The Plant Palette was developed in cooperation with the City of Newport Beach General Services Department and the Fire Department to identify suitable plant materials for the entire development including open space, parks and recreational areas, public common areas, roadways, HOA areas and private lots. All development within the Project site is required to comply with the requirements of the Plant Palette including all private and public landscape areas, such as the Community Park, Bluff Park, public road right-of-way (e.g., parkways and medians), and common area landscape lots owned and maintained by the HOA. Private individual lots/yards landscape designs would be required to comply with the approved Plant Palette.

The Master Landscape Plan divides the Project into five landscape zones as identified in the “Community Landscape Zones Map” of the Master Landscape Plan. Three landscape zones are identified for the development area which includes the Villages, Colonies, Parklands, and roadways within these areas. All construction-level landscape plans within these areas, including private yards, the Community Park, Bluff Parks, public roadway landscaping, and public common area landscaping whether HOA- or publicly-maintained, would be required to use plant materials listed on the approved Plant Palette. The initial planting and the ongoing landscape maintenance of these areas are required to be monitored and weeds and invasive plants not on the approved Plan Palette are required to be removed.

Two landscape zones are described for the Open Space Preserve which includes Habitat Restoration areas and a Dual Habitat Restoration and Fuel Management Zone and public roadways. The planting plan and plant materials for these areas are described in the Habitat Restoration Plan (see Appendix A of the Master Development Plan).

Section 3.3, Landscape Regulations, from Chapter 3 of the NBR-PC will be revised to remove the exclusive reference to private lots/yards.



Educational materials would be distributed to the Homeowners Association and individual homeowners as part of Source Control Best Management Plan (BMP) N1, in the Final Water Quality Management Plan (WQMP). Examples include educational brochures developed by the County of Orange, such as “Homeowners Guide to Sustainable Water Use” and “Tips for Landscaping and Gardening”. These materials also provide recommendations and Best Management Practices for homeowners and HOA’s for proper use of fertilizer and pesticides and best practices for landscaping management. Copies of the brochures would be included in the Final WQMP, which would also include references to additional pollution prevention brochures to be distributed to residents by the Homeowners Association under BMP N1. Restrictions would be placed within the Covenants, Conditions, and Restrictions (CC&R) on strict conformance of use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers and other chemicals while following all applicable federal, State, and County requirements as prescribed on their respective containers.

## TOPICAL RESPONSE

### BLUFF ROAD/NORTH BLUFF ROAD LOCATION AND ALIGNMENT

The General Plan was adopted by the City Council on July 25, 2006; the land use plan and land use tables of the Land Use Element were approved by the voters on November 6, 2006. The General Plan designates the Newport Banning Ranch property as Open Space/Residential Village (OS/RV). The OS/RV land use designation provides land use regulations and development standards for both the Primary Use (Open Space) and an Alternative Use (Residential Village) as described below:

#### Primary Use:

Open Space, including significant active community parklands that serve adjoining residential neighborhoods if the site is acquired through public funding.

#### Alternative Use:

If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space.

The *City of Newport Beach General Plan's* Circulation Element and the Orange County Master Plan of Arterial Highways (MPAH) depict a north-south roadway through the Newport Banning Ranch property extending from West Coast Highway to 19<sup>th</sup> Street. The City's Circulation Element designates this roadway as a Primary Road<sup>10</sup>. The Orange County MPAH designates the roadway as a Primary from West Coast Highway to 17<sup>th</sup> Street and as a Major from 17<sup>th</sup> Street to 19<sup>th</sup> Street. The location of the proposed Bluff Road from West Coast Highway to 19<sup>th</sup> Street is in the general location shown on both the City's Circulation Element and the Orange County MPAH. Both the City's General Plan Circulation Element and the Orange County MPAH assume a roadway through the Newport Banning Ranch property from West Coast Highway to 19<sup>th</sup> Street regardless of whether the property is retained as Open Space or developed as a Residential Village.

The alignment of Bluff Road is intended to balance design factors including but not limited to earthwork quantities, geometric road standards, design speed, connection point at West Coast Highway, a connection to existing 15<sup>th</sup> Street, habitat impacts, and the Applicant's proposal to develop the property. The proposed alignment of Bluff Road was selected to respond to several design constraints. Following is a brief discussion of the constraints.

- **Bluffs** – Exhibit 3-3, Existing Topographic Site Conditions, in Section 3.0, Project Description, of the Draft EIR reflects the top of the bluff along West Coast Highway. Except for an alternative alignment that would bisect the Southern Arroyo, the proposed road connection to West Coast Highway is limited to the easterly 600 feet of the property frontage in order to avoid bluff impacts.

<sup>10</sup> Primary Road—A primary road/primary arterial highway is usually a four-lane, divided roadway. A primary arterial is designed to accommodate 30,000 to 45,000 Average Daily Trips (ADT) with a typical daily capacity of 34,000 vehicles per day (VPD) (Newport Beach 2006).

- **Intersection Spacing** – Based on the City and Applicant’s preliminary discussions with the California Department of Transportation (Caltrans), the nearest distance that the proposed intersection of Bluff Road at West Coast Highway can be to Superior Avenue would be approximately 450 feet from the Project property line (adjacent Sunset Ridge Park). This separation allows for adequate vehicle stacking on easterly West Coast Highway at Superior Avenue.
- **Geometrics** – Per the City of Newport Beach’s Design Guidelines (II.C), the minimum centerline radius of a Primary Road is 1,200 feet. Based on discussions with City staff and using a design speed of 40 miles per hour (mph), the Applicant has proposed a centerline radius that is reduced to 1,000 feet. The reduction to a 1,000-foot radius would allow for increased flexibility to minimize impacts while allowing for a construction of Bluff Road from 15<sup>th</sup> Street to West Coast Highway. The design guidelines also require a 100-foot tangent between reversing curves. Super elevation has not been considered.
- **Vegetation** – As shown in Exhibit 4.6-1.b of Section 4.6, Biological Resources, in the Draft EIR, there are many existing vegetation types on site. The Bluff Road alignment was sited, where possible, in areas of non-native grassland, ornamental vegetation, and disturbed vegetation to avoid or minimize impacts to Southern coastal bluff scrub and other sensitive vegetation types.
- **Earthwork** – The maximum street grade referenced in the City’s Design Guidelines is 7 percent (II.B). The City is allowing a deviation to 8 percent maximum because it would allow for reduced earthwork and lessens the grading footprint necessary for proposed Bluff Road in the reach from West Coast Highway to the Resort Colony Road.



## **FEDERAL AGENCIES**





**Comment Letter F1**  
**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

NOV 8 2011

Patrick J. Alford  
Planning Manager  
Community Development Department  
City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915

Dear Mr. Alford:

NOAA's National Marine Fisheries Service (NMFS) has reviewed the City of Newport Beach's (City) Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project (Project) to develop an approximately 401 acre site in and around the City of Newport Beach in Orange County, California. NMFS offers the following comments pursuant to the essential fish habitat (EFH) provisions of the Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act (FWCA).

Given that the proposed activity will likely require a federal permit from the U.S. Army Corps of Engineers (Corps) pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, NMFS is providing comments on the DEIR in anticipation of the EFH consultation process this permit would require. NMFS also intends to submit comments to the Corps pursuant to our responsibilities under the FWCA. We believe that coordination between NMFS and the City of Newport Beach at this stage of project planning would facilitate a more effective and streamlined EFH and FWCA consultation process between the Corps and NMFS.

1

The DEIR indicates that the Master Development Plan designates a minimum of 220 gross acres of the Project site as wetland restoration/water quality areas, habitat conservation, and restoration mitigation areas. The Master Development Plan includes a Habitat Restoration Plan for the habitat areas, containing provisions for the preservation and long-term maintenance of existing sensitive habitat and habitat created and restored by the Project. In addition, the DEIR acknowledges the potential need to mitigate for impacts to jurisdictional areas of resource agencies, including wetlands. However, the DEIR lacks specifics as to how the habitat restoration or conservation would be implemented.

2

NMFS is particularly interested in habitat restoration or enhancement that would occur in the area identified as lowland open space, comprising approximately 147 acres of the project site. We believe that restoring wetlands to a portion of this lowland area would provide high quality habitat for native fish, birds and other wildlife. Moreover, establishing a mitigation bank and/or

3



in lieu fee program at this site to compensate for impacts caused by this project and/or other projects in the vicinity could be an effective use of this lowland area and should be evaluated. Therefore, NMFS encourages the City to develop a detailed restoration plan for the lowland open space area that includes a wetland component to facilitate the review of the proposed project by NMFS and other resource agencies. In addition, NMFS requests that we be invited to participate	3 cont.
in any future lowland restoration planning efforts. Lastly, we encourage the City to incorporate an analysis of potential climate change impacts to the project area and the potential risk of increasing the vulnerability of the proposed development areas to climate change impacts.	4

Thank you for considering our comments. If you have any questions, please contact Eric Chavez at (562) 980-4064 or [Eric.Chavez@noaa.gov](mailto:Eric.Chavez@noaa.gov).

Sincerely,



for Robert S. Hoffman  
Assistant Regional Administrator  
for Habitat Conservation Division



**Letter F-1      National Oceanic and Atmospheric Administration, National Marine Fisheries Service**  
Robert S. Hoffman, Assistant Regional Administrator  
November 8, 2011

### **Response 1**

The comment is noted.

### **Response 2**

As discussed on page 3-9 of Section 3.0, Project Description, of the Draft EIR, one of the objectives of the Project is to provide for the “long-term preservation and management of the Habitat Areas through the establishment of a conservation easement or deed restriction and the creation of an endowment or other funding program”. The Draft EIR identifies areas in the Middle Arroyo and the Lowland area where wetland and/or riparian habitat restoration could occur; please see Exhibits 3-2 and 3-15 of the Draft EIR. The proposed restoration areas currently consist of non-native vegetation or areas subject to long-term oilfield disturbance such as oil well pads and access roads.

Habitat restoration would be the responsibility of the Applicant in the areas identified in the Draft EIR and Habitat Restoration Program (HRP). Should the proposed Project be approved, the Open Space Preserve would be permanently restricted as open space. Further, the conditions of approval would detail the structure and funding of the ownership and maintenance of the open space. It is anticipated that either a conservancy would be formed or a qualified existing organization would be named as the land steward, and funding for long-term maintenance would be provided by a number of sources including endowments, Homeowners Association fees, property transfer taxes, and other to be determined funding sources, or some combination of all.

Compensatory mitigation for impacts would be subject to the approval of the City's mitigation requirements set forth in the Draft EIR and respective regulatory agencies including the U.S. Army Corps of Engineers (USACE), the California Department of Fish and Game (CDFG), the U.S. Fish and Wildlife Service (USFWS), the Regional Water Quality Control Board (RWQCB), and the California Coastal Commission. Details for the mitigation of jurisdictional resources can be found in Mitigation Measure (MM) 4.6-5 of the Draft EIR. The Applicant would be required to obtain permits/agreements/certifications from the agencies listed above and implement/comply with the mitigation measures required by the resource agencies regarding impacts on their respective jurisdictions. In total, as compensation for permanent and temporary impacts to 12.93 acres of riparian habitat, the Project would create 15.77 acres of riparian habitat. In addition, the Project would preserve 23.03 acres of riparian habitats, for a total of 38.80 acres of restoration and preservation. Details of the restoration required are summarized in Table E on Page 4.6-84 of the Draft EIR.

MM 4.6-5 also identified the requirement of a detailed restoration program to be prepared, subject to the approval of the City and the resource agencies. The program would include, at a minimum, (1) responsibilities and qualifications, (2) site selection, (3) site preparation and planting implementation, (4) schedule, (5) maintenance plan/guidelines, (6) monitoring plan, and (7) long-term preservation. In addition, MM 4.6-5 identified avoidance and performance standards such as (1) protective fencing during ground-disturbing activities, (2) riparian habitat restoration activities shall be initiated no later than one year after issuance of the first grading permit, (3) final success of restoration areas lies with the City and the resource agencies, (4)

five years of monitoring and maintenance, and (5) the performance criteria shall take least Bell's vireo habitat requirements into consideration.

### **Response 3**

The Project proposes that the open space in the Lowland area and public trails and facilities include habitat conservation, restoration, and mitigation; public interpretive trails; a water quality basin; and a planting buffer around a portion of the northern oil consolidation site. This would include the restoration of alkali meadow, riparian scrub, and limited areas of native upland scrub habitat along the margins of the Lowland Open Space area. The exact amount of acreage within the Lowland Open Space area that would be required to be restored as native habitat to satisfy the mitigation requirements of the proposed Project has not been established because it would be subject to the approval of respective regulatory agencies including the USACE, the CDFG, the USFWS, the RWQCB, and the Coastal Commission. If the Project's mitigation requirements do not require the restoration of the approximately 118.4-gross-acre Lowland area, any remaining acreage requiring restoration would be placed in a reserve area (mitigation bank) or similar mechanism and may be made available to third parties seeking off-site areas in which to fulfill their respective mitigation obligations. The area would be restored in accordance with the Project's Habitat Restoration Plan discussed later in this section. One area that is contemplated for inclusion in a mitigation bank is the land proposed for use for the consolidated oil operations. Upon cessation of oil production operations, these two oil consolidation sites would be remediated and could be available in a reserve area. In developing such programs, it is expected that the appropriate State and federal agencies such as National Marine Fisheries would be available for input.

### **Response 4**

Climate change is addressed in Section 4.3, Geology and Soils, Section 4.4, Hydrology and Water Quality, and Section 4.11, Greenhouse Gas Emissions, of the Draft EIR.

## **STATE AGENCIES**



Comment Letter S1a

**Alford, Patrick**

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**From:** Karl Schwing [kschwing@coastal.ca.gov]  
**Sent:** Friday, November 04, 2011 9:50 AM  
**To:** Alford, Patrick  
**Subject:** Banning Ranch DEIR Comment Period

Hi Patrick,

As we discussed yesterday on the phone, Commission staff would like to request an extension of the time period within which we will provide comments on the DEIR for the Banning Ranch project. We can commit to providing comments to you on or before Friday, November 18<sup>th</sup>. Please let me know if that would be acceptable. Please also let me know whether the City would commit to responding to our comments if provided to you by November 18<sup>th</sup>, or if we would need to provide comments by November 8<sup>th</sup> (the current official end to the comment period) to guarantee such response.

1

Thank you very much for your consideration.

Regards,

Karl Schwing  
California Coastal Commission  
South Coast Area Office/Long Beach

**Letter S1a**     **California Coastal Commission, South Coast Area Office**  
Karl Schwing  
November 4, 2011

**Response 1**

The request of the California Coastal Commission is noted. Please refer to the responses to Comment Letter S1b.

**Comment Letter S1b**

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

EDMUND G. BROWN, JR., Governor

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071



November 8, 2011

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915

RECEIVED BY  
COMMUNITY

NOV 09 2011

RE: **COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT**  
**SCH# 2009031061**  
Site: Newport Banning Ranch  
Newport Beach, Orange County

DEVELOPMENT  
CITY OF NEWPORT BEACH

Dear Mr. Alford,

Thank you for the opportunity to review the Draft Environmental Impact Report for the residential and commercial development at Newport Banning Ranch. According to the Draft EIR, the proposed project includes 1,375 residential dwelling units, 75,000 square feet of commercial space, a 75-room resort inn, approximately 51.4 gross acres for active and passive park uses, and 252.3 gross acres for natural resources protection in the form of open space.

The following comments address, in a preliminary manner, the issue of the proposed project's consistency with the Coastal Act. This letter is an overview of the issues we've identified at this time based on the time available for analysis and the information we've been presented and is not an exhaustive analysis. The comments contained herein are preliminary and those of Coastal Commission staff only and should not be construed as representing the opinion of the Coastal Commission itself.

**I. Procedure for Commission Review of the Proposed Development**

The DEIR states that the applicant intends to request a 'master coastal development permit' from the Coastal Commission for the proposed development. The DEIR suggests that the Commission would be asked to provide a preliminary review and approval of land uses, with details of some portions of the development, and lesser details for other parts of the development. It also suggests the 'Master CDP' would set up a process for delegating review and approval authority for certain details of the project to the City when the City has no authority for ultimate approval of any part of the project. There is no statutory or regulatory authority for the kind of coastal development permit review process described in the DEIR. Rather, the process the DEIR describes is more akin to requesting approval of a Local Coastal Program, not a coastal development permit. Such request would need to come from the City and not the developer.

Given the scope and complexity of the proposed project, Commission staff would recommend that the project be considered in the context of a Local Coastal Program review, submitted by the City. This would allow for consideration of significant threshold issues at the planning level, such as the kind, location and intensity of development that would be appropriate for the site given the priorities established under the Coastal Act and the constraints present on the site (e.g. biological resources, geologic hazards, etc.). Furthermore, we do not endorse the 'master CDP' process described in the DEIR, and believe it would be unworkable. The CDP process is not appropriate for analyzing conceptual projects; rather it is designed for consideration of specific projects with



<p>known and identifiable impacts. Such impacts couldn't be identified at the conceptual level. Significant additional details regarding the planned development would be needed in order to properly analyze the effects of the development in the context of a CDP application. Those details are not available now and would not normally be available until the planning level issues described above have been resolved, and are better resolved in the LCP context. <b><u>Thus, references to a 'master CDP' process should be removed from the DEIR.</u></b></p>	<p>2 cont.</p>
<p><b><u>Legal Status of Disturbances on Site</u></b></p> <p>The DEIR characterizes acres of the subject site as disturbed due to ongoing oil field operations that purportedly began in the 1940s. The disturbances include, but may not be limited to, the presence of bare dirt, roads, areas developed with oil field equipment and buildings, and places where vegetation thinning, mowing, and/or clearing have occurred. The DEIR describes removal of oil field equipment and discontinuation of operations within certain areas, and restoration of disturbed areas as one benefit of the proposed development plan. The DEIR suggests that the existing oil operations are merely a continuation of those that began in the 1940s, and cites authorization for continuation of those oil operations after passage of Proposition 20 under California Coastal Commission South Coast Regional Coastal Zone Conservation Commission Claim for Exemption No. E-7-27-73-144. At this time, we have not yet analyzed whether the existing operations are in compliance with the exemption cited. The DEIR should include the details regarding the extent of the exemption authority that Newport Banning Ranch claims exists for its ongoing oil operations.</p> <p>When a project is submitted to the Commission for authorization, the Commission's analysis of impacts will be based on the legally permitted condition of the site. If there are any unpermitted impacts to native vegetation, wetlands, or other habitat, the impacts of the proposed project will be based on the conditions prior to the unpermitted impacts. Assertions have been made during a public comment period at a Commission meeting that unpermitted resource impacts have occurred on the subject site. Therefore, we recommend that the City and/or applicant thoroughly and precisely document the activities that led to the existing disturbed conditions, and whether those conditions were legally authorized or subject to a vested rights determination.</p> <p>Please note that if the City and/or applicant will be claiming a 'vested right' to conditions on the subject property arising from ongoing oil field operations and/or vegetation thinning, mowing, and/or clearing, a claim of vested rights must be made to the Commission. The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations. These regulations require that the individual(s) or organization(s) asserting the vested right, make a formal 'claim' with the Commission, that staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim. If the Commission finds that the claimant has a vested right for a specific development, the claimant is exempt from CDP requirements to complete that specific development only. Any substantial changes to the development subject to the vested rights determination after the effective date of Prop 20 will require a CDP. If the Commission finds that the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.</p>	<p>3</p>
<p><b><u>II. City of Newport Beach Coastal Land Use Plan</u></b></p> <p>The City's 2005 Coastal Land Use Plan also contains a variety of other policies aimed at the protection of coastal resources, including but not limited to public access; protection, enhancement and provision of lower cost visitor serving and recreational development; water quality protection and enhancement; visual resources; avoidance of geologic hazards; and the protection of archeological resources, among others. The Chapter 3 policies of the Coastal Act will remain the</p>	<p>4</p>



standard of review for any coastal development permit until the City (or County) has a fully certified Local Coastal Program, although, the Coastal Land Use Plan will provide strong guidance. **The EIR should analyze the consistency of the proposed development with applicable policies in the certified Coastal Land Use Plan and Chapter 3 policies of the Coastal Act and identify and address impacts accordingly.**

4 cont.

### **III. Biological Resources**

#### **A. Relevant Statutes:**

Coastal Act Section 30240 states (emphasis added):

(a) *Environmentally sensitive habitat areas **shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed** within those areas.*

(b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be **sited and designed to prevent impacts** which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30240 of the Coastal Act requires the protection of ESHA from significant disruption of habitat values, and further specifies that only uses dependent on those resources shall be allowed in those areas. Also, development adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and be compatible with the continuance of the habitat.

5

A key point is that Section 30240 requires that development **avoid** impacts to ESHA. Unlike the requirements for other resource agencies, Section 30240 does not allow for non-resource dependent impacts to an ESHA area, and mitigation for those impacts in other areas. Rather, Section 30240 requires that proposed new development be located outside of ESHA areas. Additionally, Section 30240 requires siting, design, and appropriate buffers to ensure that development adjacent to ESHA does not result in impacts to ESHA.

Buffers are important for preserving the integrity and natural function of environmentally sensitive habitats. The purpose of a buffer is to create a zone where there will be little or no human activity, to "cushion" species and habitats from disturbance, and to allow native species to go about their "business as usual". Buffer areas are essential open space between development and ESHA. The existence of open space ensures that development will not significantly degrade ESHA. Critical to buffer function is the fact that a buffer area is not itself a part of the ESHA, but a "barrier" or "screen" that protects the habitat area from adverse environmental impacts. Habitat buffers provide many functions, including keeping human disturbances such as noise, night lighting, and domestic animals, at a distance; Reducing the hazards of herbicides, pesticides and other pollutants, And preventing or reducing shading and reducing the effects of landscaping activities. Buffers also protect against invasive plant and animal species that are often associated with humans and development.

Coastal Act Section 30107.5 defines Environmentally Sensitive Areas as:

*"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Plants and animals and habitats that meet the rarity criterion under this definition may include rare plant communities identified by the California Department of Fish and Game (CDFG), federal and state listed species, California Native Plant Society "1B" and "2" plant species, California species of special concern, and habitats that support the type of species listed above. A habitat could also be designated as ESHA due to its special nature or role in an ecosystem, such as if it provides an important function in a local ecosystem, or regional significance.

Although the City of Newport Beach Coastal LUP (CLUP) does not currently apply to the subject site, it contains numerous policies for coastal resource protection that should be referenced with regard to this site. As the most proximate and relevant discussion of habitat areas in and around the City, **a discussion of the policies of the Coastal Land Use Plan for the City of Newport Beach should be included within the EIR.** The buffer area/setbacks identified in the CLUP should be viewed as minimums; larger buffers/setbacks may be deemed appropriate at the subject site if necessary to protect biological resources. The City of Newport Beach Coastal Land Use Plan (CLUP) provides criteria for determining what constitutes ESHA in the Natural Resources section, including the following:

*In determining whether a habitat area meets the statutory definition of ESHA contained in Section 30107.5 of the Coastal Act and should be designated as an ESHA, the following attributes need to be taken into consideration:*

- *The presence of natural communities that have been identified as rare by the California Department of Fish and Game.*
- *The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.*
- *The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.*
- *The presence of coastal streams.*
- *The degree of habitat integrity and connectivity to other natural areas.*

The LUP goes on to discuss particular species and habitats of importance within the City, and also states the following:

*Where the habitats discussed above occur in the City of Newport Beach the presumption is that they are ESHA and the burden of proof is on the property owner or project proponent to demonstrate that that presumption is rebutted by site-specific evidence.*

In summary, there is a significant amount of guidance available in both the Coastal Act and the Land Use Plan for the City. The policies therein stress the preservation of existing ESHA areas, and avoidance of ESHA.

5 cont.



B. Determination of ESHA

The figures shown in the DEIR only include one year of survey data. In review of previous projects on or near the Newport Banning Ranch property (Cease and Desist Order CCC-11-CD-03, Consent and Restoration Order CCC-11-RO-02, and Coastal Development Permit 5-10-168), the Commission staff has reviewed a continuous survey record of gnatcatcher usage from 1992 to 2009. However, only a single year of data is shown for the usage of sensitive species of the property, and of this year of data, only a single point is shown to indicate usage. A single year of data is not sufficient to draw conclusions regarding the usage of habitat on the subject site by sensitive species, as some sensitive species, such as Burrowing Owls, may be absent one winter and present the next. Furthermore, surveyors do not always detect rare species they are searching for, even when individuals are present. Finally, a point does not indicate the range of habitat that was observed by the surveyor, and does not indicate the entirety of the habitat which should be protected. For these reasons, **the EIR should be updated to reflect all known survey data regarding all sensitive species on the site, and the maps should be updated to indicate the extent of usage.**

An ESHA designation is based on site specific circumstances, and, except for the portion of the site that is part of the Sunset Ridge Park project that was heard at the Commission's November 2011 hearing, the Commission staff has not yet performed a formal ESHA delineation for the site. However, the site is known to support significant numbers of sensitive species, and there are likely significant areas of ESHA on the site. ESHA determinations are based on site specific circumstances, which the Commission has not had the ability to review in full. However, generally, habitat which supports sensitive species would be considered ESHA. Other examples of potential ESHA include rare community types, such as Coastal Bluff Scrub, and non-native or degraded habitat that supports special status species.

As listed above, Coastal Act Section 30240 requires that development **avoid** impacts to ESHA. Therefore, it is important that the EIR process incorporate a determination of probable ESHA areas and their required buffers before land use areas and development footprints are established. **We suggest that ESHA and wetland delineations and recommended buffers be reviewed by Coastal Commission staff biologists before the EIR is finalized.**

C. Compatibility with ESHA policies

In regards to Coastal Act Section 30240, The DEIR states:

*The Project is consistent with this section. Section 4.6.4 of this DEIR has identified and mapped the vegetation types and special status species occurrences known to occur within the Project Site. The Project and associated mitigation measures avoid, minimize, and compensate for the placement of development within these areas to prevent a substantial degradation of these areas or significantly disrupt habitat values. The determination of what areas would be regulated as ESHA would be made by the Coastal Commission as part of the CDP process for the Project.*

Based on a preliminary analysis by the Commission to date of the provided information, the development proposed in the EIR does not appear to be compatible with Coastal Act Section 30240.

The proposed project includes a four lane arterial from West Coast Highway to access the subject site. Coastal Commission Staff recently analyzed the habitat resources present in the footprint of the proposed road in processing the Coastal Development Permit for Sunset Ridge Park by the



<p>City of Newport Beach (Please see the Staff Report and attached exhibits for Coastal Development Permit 5-10-168 available on the Commission's web site at <a href="http://documents.coastal.ca.gov/reports/2011/11/W16a-11-2011.pdf">http://documents.coastal.ca.gov/reports/2011/11/W16a-11-2011.pdf</a>). Staff has determined that a four lane arterial road in the proposed location would result in significant, unavoidable impacts to ESHA. Therefore, staff has determined that the proposed arterial road would be inconsistent with the Coastal Act. <b><u>Therefore, the EIR should more fully consider alternative intensities of development on the site and alternative means to access the property, and should not rely on access from West Coast Highway, as such access would likely be found to be inconsistent with the Coastal Act.</u></b></p>	<p>7 cont.</p>
<p>The proposed project involves extensive grading and the placement of structures within and adjacent to sensitive habitats and species (as presently mapped in the DEIR). Once more fully mapped as recommended herein, the quantity of sensitive habitat areas may be even more extensive. In any event, its clear that the proposed development would result in the elimination of habitat supporting sensitive species. The special status species and habitats that are known to be supported by the site and which are possibly impacted by the proposed development footprint include the San Diego fairy shrimp, Coastal California Gnatcatcher, wetlands, riparian habitat, Southern tarplant, least Bell's vireo, Belding's savannah sparrow, Cooper's hawk, sharp shinned hawk, Northern harrier, white-tailed kite, osprey, merlin, California gull, loggerhead shrike, California horned lark, coastal cactus wren, yellow warbler, and yellow-breasted chat. Exhibits 4.6-6a and 4.6-6b of the EIR show that development is planned in areas that support sensitive species, and would fragment and isolate habitat areas located on the site. Both the direct elimination of habitat supporting sensitive species and the fragmentation of habitat on the site would have significant deleterious impacts and would be inconsistent with Coastal Act Section 30240.</p>	<p>8</p>
<p>The proposed project shows significant elimination of non-native grassland. In the past, the Coastal Commission has identified areas of nonnative grassland as ESHA because of their value as foraging habitat for raptors. The Commission has in the past considered habitat that supports burrowing owls ESHA. The Burrowing Owl, a California Species of Special Concern, is extremely rare in Orange County due to large-scale development of nearly all the county's suitable grasslands, especially near the coast. <b><u>The EIR should evaluate whether the proposed development will result in sufficient foraging habitat for raptor species.</u></b></p>	<p>9</p>
<p>As stated above, Section 30240 requires that development avoid impacts to ESHA. Although it may be allowable by the requirements of other resource agencies, non-resource dependent impacts to ESHA and mitigation in other areas to offset those impacts, is nevertheless inconsistent with Section 30240. <b><u>Thus, the EIR should evaluate alternatives that result in avoidance of these impacts.</u></b></p>	<p>10</p>
<p><b><u>D. Other Impacts</u></b></p> <p><b>Bird Strikes:</b> From a review of the Draft EIR, it is unclear whether transparent or reflective screenwalls will be used in the design of the building or the surroundings. Glass walls are known to have adverse impacts upon a variety of bird species. Birds are known to strike glass walls causing their death or stunning them which expose them to predation. Some authors report that such birds strikes cause between 100 million to 1 billion bird deaths per year in North America alone. Birds strike the glass because they either don't see the glass, or there is some type of reflection in the glass which attracts them (such as the reflection of bushes or trees that the bird might use for habitat).</p>	<p>11</p>

There are a variety of methods available to address bird strikes against glass. For instance, glass can be frosted or etched in a manner that renders the glass more visible and less reflective. In the case of fences or walls, alternative materials can be used, such as wood, stone, or metal (although this approach isn't usually palatable when there is a desire to see through the wall). Use of frosted or etched glass, wood, stone or metal material is preferable to other types of treatments such as appliques because of the lower maintenance and less frequent replacement that is required.

A more recent development is the creation of bird-safe building standards. Multiple cities around the country have created bird safe building guidelines. Recently, the Commission approved Local Coastal Program Amendment 1-10 for the City of Long Beach, which incorporated guidelines for bird safe buildings. Given the sensitive nature of habitat in the area and the bird species present, future planning documents for the site should incorporate bird safe building standards.

11 cont.

#### IV. Development

##### A. Public Access

The proposed project includes a 75 room resort. Section 30213 of the Coastal Act provides that lower cost visitor and recreational facilities shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. Coastal LUP policy 2.3.3-1 states:

*"Lower-cost visitor and recreational facilities, including campgrounds, recreational vehicle parks, hostels, and lower-cost hotels and motels, shall be protected, encouraged and, where feasible, provided. Developments providing public recreational opportunities are preferred. New development that eliminates existing lower-cost accommodations or provides high-cost overnight visitor accommodations or limited use overnight visitor accommodations such as timeshares, fractional ownership and condominium-hotels shall provide lower-cost overnight visitor accommodations commensurate with the impact of the development on lower-cost overnight visitor accommodations in Newport Beach or pay an "in-lieu" fee to the City in an amount to be determined in accordance with law that shall be used by the City to provide lower-cost overnight visitor accommodations."*

12

This language stems from Coastal Act Section 30213 and supports lower-cost visitor accommodations as a priority use in the coastal zone. Therefore, **the EIR should analyze the demand for lower cost overnight visitor accommodations as well as other lower cost public recreational facilities in relation to the existing inventory and range of affordability of such uses in the City of Newport Beach coastal zone.** Based on this analysis, such facilities must be addressed and incorporated into the potential build-out of the subject site.

##### B. Oil and Gas Consolidation

It is unclear from the DEIR what development would be undertaken as a result of the consolidation of oil operations on the site. Consolidation activities may have impacts on sensitive resources on the site, and should be planned and managed carefully to avoid those impacts. The EIR should also more carefully break down the size of the open space proposed in the development. The consolidated oil and gas operations on the site do not have a timeline on their usage, and including such operations in the open space total may be misleading if the consolidated operations will continue for the foreseeable future.

13



<b><u>V. Visual</u></b>	14
<p>The DEIR indicates the project being considered may require up to 2,500,000 cubic yards of grading. This suggests the project involves significant landform alteration. Section 30251 of the Coastal Act requires that landform alteration be minimized. <b><u>The EIR should be revised to include an analysis of whether there is significant landform alteration on the site.</u></b></p>	
<b><u>VI. Geology</u></b>	15
<p>The DEIR indicates that there are three areas in which a fault-setback is required because of the inability to rule out the presence of active faulting at the site. Two of these areas, the north and south segments of the Newport Mesa Fault, are separated but in line. Further, it is logical to conclude that the area between two segments of an active fault in such close proximity is likely active as well. Accordingly, the fault setback zones should be extended to connect the north and south segments of the Newport Mesa fault unless further study conclusively demonstrates that the area of the fault between these segments is not active as defined by the State of California.</p>	
<p>Quantitative slope stability analyses should be performed for all cut and fill slopes not only for the existing condition, but more importantly, for the proposed development. Essentially, a geotechnical review of the proposed grading plan should be performed to assure stability and structural integrity and that the development will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.</p>	
<b><u>VII. Water Quality</u></b>	16
<ul style="list-style-type: none"> <li>The EIR states that the project will prepare a Water Quality Management Plan (WQMP) following the guidance produced by Orange County dated May 2011. That WQMP will need to be included in the coastal development permit application which is eventually submitted.</li> </ul>	
<ul style="list-style-type: none"> <li>Portions of the water quality basins described in the EIR appear to overlay existing ESHA. In similar projects, the CCC has not found that conversion of existing ESHA into water quality treatment facilities to be consistent with the Coastal Act or Local Coastal Programs.</li> </ul>	17
<ul style="list-style-type: none"> <li>The WQMP will need to show that the combination of LID, source control and treatment control BMPs, meeting CASQA design standards, for the site will treat at least the runoff generated by the 85<sup>th</sup> percentile storm event (3/4 inch, 24-hour storm).</li> <li>The WQMP or another document will need to show that the development project will not increase the volume of runoff or peak runoff rate from the development.</li> <li>Any Stormwater Pollution Prevention Plan (SWPPP) submitted to the SWRCB will need to be included in the eventual coastal development permit application.</li> </ul>	18
<ul style="list-style-type: none"> <li>It is stated that although it will be feasible to apply traditional LID treatments at some locations with no limitation to the volume that is infiltrated, other areas would require sub-drains and impermeable liners to prevent infiltration that would penetrate into groundwater,</li> </ul>	19

<p>or that perforated drainpipe might be used to infiltrate a portion of the runoff to deeper geologic strata in other areas where geotechnical conditions allow.</p> <p>The extent to which LID can be used effectively for this development appears to depend on the infiltration capacity of the soils, the depth to groundwater and geotechnical considerations. LID is a practice where runoff is infiltrated, evaporated or reused close to the source; normally each residence's roof and driveway runoff is infiltrated into the landscape adjacent to these features. There is a qualitative commitment to use LID within the development, but not at all locations within the development due to the above concerns.</p> <p>It is also not clear whether runoff collected in the sub drains will be routed to a conventional storm drain system or to the proposed water quality basin, or how it will be determined where the collected sub drain water would be routed.</p> <p>In the final WQMP prepared for the project, the actual area and volume of runoff handled by the LID system and that collected in sub drains, and where it would drain to, will need to be discussed.</p>	<p>19 cont.</p>
<ul style="list-style-type: none"> <li>The North Orange County Permit Area has requirements for development that prevents hydromodification as measured for a 2-year return interval storm event. The EIR does not commit to limiting hydromodification effects from the project, but does appear to provide infiltration to the MEP for the project, which is a basic step toward preventing hydromodification. The WQMP that will be prepared for the project should discuss the extent to which LID and other stormwater BMP would be effective in preventing hydromodification, and should demonstrate how closely the hydrograph for a 2-year return interval storm would be matched post development.</li> </ul>	<p>20</p>
<ul style="list-style-type: none"> <li>The EIR presents tables of possible site design BMPs and possible non-structural source control BMPs that could be used on the site. Although the lists are exhaustive, it is not clear which of the methods are to be considered for the development. The WQMP should detail which of the BMPs would actually be used and how the decision to use or not use a BMP was made.</li> </ul>	<p>21</p>
<p><b><u>VIII. Wetlands</u></b></p> <p><b><u>A. Wetland Delineation</u></b></p> <p>The Coastal Commission's regulations (California Code of Regulations Title 14 (14 CCR)) establish a "one parameter definition" that only requires evidence of a single parameter to establish wetland conditions:</p> <p><i>Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. (14 CCR Section 13577)</i></p>	<p>22</p>



The Commission's one parameter definition is similar to the USFWS wetlands classification system, which states that wetlands must have **one or more** of the following three attributes:

*(1) at least periodically the land supports predominantly hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year*

For more information on how the Commission delineates wetlands, please see the staff report and video archive of the workshop on wetlands which was held on October 5, 2011.

The wetland delineation shown on figure 4.6-3c does not match the identification of sensitive habitat on figures 4.6-6a and 4.6-6b, which identifies areas that contain the endangered San Diego fairy shrimp. Areas are identified in the EIR as having the endangered San Diego Fairy Shrimp which do not appear on the wetland delineation.

22 cont.

The existence of fairy shrimp in these areas would suggest that the sites support ponding water for a sufficient length of time to support the fairy shrimp. As a result, sites which support fairy shrimp are sites that would also be considered wetlands. Vernal pools may also qualify as wetlands due to the presence of wetland indicator species or hydric soils. Vernal pools also often qualify as ESHA, as vernal pools are rare and valuable habitats in Orange County.

**The wetland jurisdiction maps in the DEIR should be updated to reflect this change. Furthermore, the data supporting the wetland delineation should be re-evaluated to ensure that areas which match the CCC wetland definition are properly considered in the EIR.**

#### B. Impacts to Wetlands / Wetland Buffers

##### **Coastal Act Section 30231 states (emphasis added):**

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health **shall be maintained and, where feasible, restored** through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, **maintaining natural vegetation buffer areas** that protect riparian habitats, and **minimizing alteration of natural streams.***

##### **Coastal Act Section 30233 states in part (emphasis added):**

*(a) The **diking, filling, or dredging** of open coastal waters, **wetlands**, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and **shall be limited to the following:***  
*(1) **New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.***  
*(2) **Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.***

23



- (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) Restoration purposes.*
- (7) Nature study, aquaculture, or similar resource dependent activities....*

*(c) In addition to the other provisions of this section, **diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary....***

The City's Coastal Land Use Plan states:

**4.2.2-3. Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.**

23 cont.

In summary, wetlands are protected under the Coastal Act and the City of Newport Beach certified Land Use Plan. The development allowed in wetlands is restricted to certain allowable uses, and development adjacent to wetlands must be sited with appropriate buffers to ensure the continuance of the wetland.

It appears that development is proposed within wetlands. A comparison of exhibits 4.6-3a, 4.6-6a and 4.6-6b shows that development is being proposed within mapped wetlands at drainage course A, B, and C, that development is proposed within approximately 30 feet of a mapped wetland containing endangered fairy shrimp at wetland point 16, development is proposed in areas which likely qualify as wetlands, as described above, and many of the mapped wetlands are located in close vicinity to areas planned for permanent development.

Therefore, the proposed project does not appear to be consistent with Coastal Act Sections 30231 and 30233 because the proposed project would result in the elimination or degradation of wetlands on the subject site. **The EIR should further evaluate the impacts of the development on wetland resources.** The EIR should also consider alternatives that avoid wetland impacts and result in the establishment of appropriate habitat buffers between development and wetlands.

## **IX. Archeology**

### **Cultural and Paleontological Resources**

Section 30244 of the Coastal Act requires the protection of archaeological and paleontological resources and states in part:

24

<p><i>Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.</i></p> <p>The Newport Banning Ranch DEIR states that there are 11 archaeological sites on the Project Site. Further, the DEIR states that the archaeological consultant, BonTerra Consulting, performed a walk-over on May 13, 2009 and carried out Phase II test excavation and evaluation of the 11 mapped archaeological sites. Specifically, testing activities included brush clearing, excavation of shovel test pits (STPs), and one square meter units. These activities constitute "development" under the Coastal Act. All development, unless exempt, requires a Coastal Development Permit (CDP). Because the development occurred within a mapped archaeological site, the work would not be exempt. There is no mention of CDPs having been issued for the development. Please provide information regarding any CDP that were obtained for this work.</p>	<p>24 cont.</p>
<p>Inadequate information is provided to determine the adequacy of the testing that was performed to determine the nature, extent and boundaries of existing archaeological sites on the Project Site. In order to provide adequate protection of archaeological resources, a CDP should be obtained to carry out a comprehensive archaeological research plan (ARP) so that archaeological sites are located and can be avoided in the development of the Project Site. The ARP should be carried out in a manner that is most protective of archaeological resources. The ARP should not be designed to recovery archaeological resources but to determine the nature, extent and boundaries of existing archaeological resources. The ARP should also include any subsurface archaeological investigation that was done without a CDP. The Coastal Commission requires that an ARP be subject to peer review by at least three qualified archaeologists and review and comment opportunity be extended to the State Historic Preservation Officer, Native American Heritage Commission (NAHC), and Native Americans with cultural ties to the area, as determined by the NAHC. There is no discussion of peer review or review and comments by the above mentioned parties of the archaeological research testing and implementation plan.</p>	<p>25</p>
<p>The DEIR states that numerous artifacts and features were found during previous archaeological investigations. However, the disposition of those artifacts and features is not discussed. Further, the DEIR states that no burials were found on the Project Site. However, it is not clear as to whether the archaeological testing was designed to test to the appropriate depth to detect burials.</p>	<p>26</p>
<p>Finally, the DEIR states that the Project would impact three known archaeological sites that are deemed eligible for listing on the State and National registers of historic places and that activities could also further impact unknown archaeological resources. However, the DEIR concludes that two mitigation measures have been included that will mitigate this impact to a level considered less than significant. As stated, inadequate testing has occurred to date to make such a determination. The mitigation measures (MM 4.13-1 and MM 4.13-2 are inadequate to minimize impacts to cultural resources. The mitigation measures call for the salvaging and cataloguing of archaeological resources as opposed to in-situ preservation of human remains and significant resources as the preferred option. Further, the mitigation measure state that some project grading would be monitored by Native American monitors. All grading activities that have the potential to impact Native American resources should be monitored by Native Americans with cultural ties to the area. The mitigation measures do not provide for maximum protection of archaeological resources and</p>	<p>27</p>



<p>calls for removal (data recovery) of known archaeological sites in order to make way for Project development as opposed to redesign of the Project in order to protect archaeological resources in place.</p> <p>For the above site reasons the DEIR is not consistent with Section 30244 of the Coastal Act.</p>	<p>27 cont.</p>
<p><b><u>X. Legal Inadequacies in DEIR</u></b></p> <p><b><u>2.0 Introduction Section</u></b></p> <p>The introduction fails to inform the public of the extent of the statutory and regulatory standards applicable to this EIR. "An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project." (Bakersfield Citizens for Local Control v. city of Bakersfield (2004) 124 Cal.App.4<sup>th</sup> 1184, 1197.) Please include the following statutory and regulatory references and language.</p> <p>2.1 Include entire definition of EIR from Public Resources Code, section 21061 with particular emphasis on the first sentence of this section regarding the meaning of the EIR—" a detailed statement setting forth the matters specified in Sections 21100 and 21100.1..."</p> <p>2.2 Include all language from Public Resources Code, section 21100 and all language regarding specificity of EIR found in 14 CCR 15146 in this section, "Type of Environmental Impact Report."</p>	<p>28</p>
<p><b><u>3.0 Project Description Section</u></b></p> <p>"An accurate, stable and finite project description is the <i>sine qua non</i> of an informative and legally sufficient EIR; the defined project and not some different project must be the EIR's bona fide subject. CEQA compels an interactive process of assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process" (Burbank-Glendale-Pasadena Airport v. Hensler (1991) 233 Cal.App.3d 577, 592.)</p> <p>Given the scope of the proposed development project, this chapter does not include specifics about a number of project components. The project proposal resembles more of a subdivision proposal and land use designations for the subdivision rather than a project that presents appropriate plans (architectural, engineering, etc.) for a specific number of residential, commercial, recreational, open space and circulation components. In an application for a coastal development permit, the commission typically requires specific project plans which include details of each component of the proposed project (architectural, engineering, biological, etc) and how each component may or may not impact specific coastal resources present on that component's project site. The present project description does not include the requisite detail to evaluate the scope of the impacts associated with each individual component of the proposed project. Without the</p>	<p>29</p>

specifics, it would not be possible to determine the extent of a project's impacts on coastal resources. Please revise the project description to include specific details about each component of the project and the requisite technical information about each component.	29 cont.
<p>3.6.4 Land Use Regulations subsection</p> <p>The DEIR notes that "[d]evelopment of the project would be governed by City regulatory mechanisms including the following:</p> <p style="padding-left: 40px;">A. The Newport Banning Ranch Planned Community Development Plan (NBR-PC), which would provide the zoning regulations for the Project site.</p> <p style="padding-left: 40px;">B. The Newport Banning Ranch Master Development Plan (Master Development Plan), which would provide a general site development plan for each land use area and would establish design criteria for development of each land use within the Project site."</p> <p>The DEIR mischaracterizes these "regulatory mechanisms" in the DEIR. The project applicant cannot rely on any "approval" of these regulatory mechanisms unless the City annexes the project area into its jurisdiction, the City thereafter submits an LCP amendment application to the Commission and the Commission certifies these "regulatory mechanisms" related to the project area. Without adhering to these procedures, the project's approval is subject solely to Chapter 3 policies of the Coastal Act and is entirely within the Coastal Commission's permit-issuing authority. Any alleged "regulatory mechanisms" approved by the City without receiving Coastal Commission certification will not be used as guidance in the Commission's consideration of the proposed project.</p>	30
<p><u>4.1 Land Use Section</u></p> <p>Section 4-1.6 refers to an exemption issued by South Coast Regional Zone Conservation Commission for oil/gas operations—E-7-27-73-144 (March 24, 1975). Please elaborate on the specific extent of the cited exemption.</p>	31
<p><u>4.6 Biological Resources Section</u></p> <p>Section 4.6-4, the Biological Resources chapter, alleges to list the permanent and temporary biological impacts of the project but completely fails to provide sufficient detail of the specific project components that cause the alleged impacts. Thus, the chapter does not provide sufficient detail to enable the general public to meaningfully consider the impacts associated with the project. Rather, the DEIR states generally the number of acres that will be impacted from the proposed development. Without specific analysis related to how each component of the proposed project impacts the biological resources, there cannot be a meaningful analysis of cumulative impacts, mitigation measures or feasible alternatives that may enable the applicant to redesign certain components to lessen any impact the project may have on the environment. This level of detail is particularly important for the Commission when it reviews projects to determine the extent of cumulative impacts from a project and its consideration of whether or not the proposal identifies the proper mitigation and/or alternatives for those impacts. Please include more specific detail regarding the site plans for each proposed structure, grading component, or other development, as defined in section 30106 of the Coastal Act, and the expected biological impact from the proposed development.</p>	32

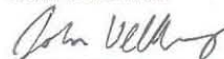
Page 15 of 15

These are some of our initial concerns; we hope these issues will be addressed in the City's review of the project. Please note, the comments provided herein are preliminary in nature. Additional and more specific comments may be appropriate as the project develops into final form and when it is submitted to the Commission for formal review. We request notification of any future activity associated with this project or related projects. Thank you for the opportunity to comment on this matter.

33

Sincerely,

John Del Arroz



Coastal Program Analyst

Cc: State Clearinghouse

**Letter S1b California Coastal Commission, South Coast Area Office**  
John Del Arroz, Coastal Program Analyst  
November 8, 2011

## **Response 1**

The Coastal Commission's comments are noted. Although the comment does not specifically relate to an "environmental issue" but rather speaks to permitting processes, the EIR will be changed to reflect that the Applicant intends to request a "Coastal Development Permit" rather than a "Master Coastal Development Permit" from the Coastal Commission to implement the proposed Project. As stated in the Draft EIR, the Coastal Commission is correct in noting that because the City of Newport Beach (City) does not have a certified Local Coastal Program (LCP) it lacks the ability to issue Coastal Development Permits. The City does not intend to request approval of a LCP at this time for the proposed Project. It should be noted that as a part of the Coastal Development Permit process before the Coastal Commission, the Coastal Commission has at times allowed local jurisdictions, such as Newport Beach, to implement specific portions of a project for which a Coastal Development Permit has been approved, including the issuance of subsequent building permits. (See Coastal Development Permit 5-06-145 in which the City of Newport Beach would issue permits subject to specific design standards and criteria approved by the Coastal Commission.) The ability to allow a local agency to issue subsequent permits that implement a project approved pursuant to a Coastal Development Permit is wholly within the discretion of the Coastal Commission.

## **Response 2**

The Coastal Commission's comments regarding submittal of a LCP are noted. As addressed in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR, the City has received approval for its Coastal Land Use Plan (CLUP) which is one-half of the required components of a Local Coastal Program (LCP), and is currently working on its Implementing Actions Plan.

Banning Ranch, which includes the Newport Banning Ranch site and the Newport-Mesa Unified School District property, is designated as a Deferred Certification Area (DCA) and is "white-holed" in the City's CLUP. In order to implement the Coastal Commission's suggestion, the City would be required to amend its CLUP and complete work on its City-wide Implementing Actions Plan, or would be required to submit a proposed LCP for a discrete segment (i.e., Banning Ranch) of its coastal zone. At this time, the City is not pursuing either approach. Consequently, the Applicant is proposing to apply for a Coastal Development Permit to implement its proposed Project. The Coastal Commission's comments regarding the level of detail required for a Coastal Development Permit will be forwarded to the Applicant for its consideration in preparing its application to the Coastal Commission. As noted in the response to Comment 1, references to "master CDP" are incorporated into the Final EIR as "Coastal Development Permit" or "CDP".

The City disagrees with the Coastal Commission in one significant respect: to the extent that the Coastal Commission suggests that the proposed Project is too conceptual to be adequately analyzed and evaluated for the purposes of environmental impacts. The State CEQA Guidelines Section 15124 requires only a general description of the project's technical, economic, and environmental characteristics. The court in *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 27, specifically rejected the notion that "only precise engineering designs provide the necessary detail to analyze the environmental consequences of the entire project under CEQA". To the extent that the Coastal Commission suggests that environmental review should wait for more specific Project designs, the City also disagrees. CEQA contemplates that environmental review occur "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late



enough to provide meaningful information for environmental assessment” (State CEQA Guidelines §15004, subd. (b)).

### Response 3

The oil operations on the Project site are under the control and management of West Newport Oil Company which also holds the right to extract the subsurface oil resources. The ownership of the subsurface mineral rights and the ability to extract the oil resources should be distinguished from the rights of the Project Applicant, Newport Banning Ranch LLC, which has an option to develop the surface of the Project site.

The City understands that the oil operations are being conducted pursuant to Exemption No. E-7-27-73-144. Because the purpose of the EIR is to analyze the potential significant environmental impacts of the proposed Project, it is not within the scope of this EIR to provide details regarding the extent of the exemption authority that is claimed by West Newport Oil Company. The Applicant neither conducts the ongoing oil operations nor is the holder of the exemption. For those same reasons, it is not within the scope of the EIR to document the activities that led to the existing disturbed conditions and whether those conditions were legally authorized or subject to a vested rights determination. The Draft EIR analyzes the proposed Project against baseline conditions which are defined as the existing physical conditions when the Notice of Preparation is published, and does not document what activities led to the baseline conditions. This is consistent with CEQA which mandates that the impacts of a project be compared against existing, physical conditions. (See, for example, State CEQA Guidelines §15125, subd. (a); *Sunnyvale West Neighborhood Association v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1373-1374; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1442-1453; *Fat v. County of Sacramento* (2002) 97 Cal.App.4th 1270, 1280-1281.)

The Coastal Commission's comments regarding the process for claiming a “vested right” are noted. These comments do not raise environmental issues regarding the analysis of impacts in the Draft EIR. Please also refer to Topical Response: Mowing and Fuel Modification.

### Response 4

As addressed in Section 4.1, Land Use and Related Planning Programs, of the Draft EIR, the CLUP establishes goals, objectives, and policies that govern the use of land and water in the Coastal Zone within the City of Newport Beach and its Sphere of Influence, with the exception of Newport Coast and *Banning Ranch*. Banning Ranch, which includes the Newport Banning Ranch site and the Newport-Mesa Unified School District property, is designated as a Deferred Certification Area (DCA). The City's CLUP sets forth policies with respect to Banning Ranch as a DCA:

#### Policies:

- 2.2.4-1. Designate the Banning Ranch property as an area of deferred certification until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations and the protection of the coastal resources on the property.
- 2.2.4-2. Depict the boundaries of deferred certification areas on the Coastal Land Use Plan Map and other applicable LCP maps.

Because the Banning Ranch property is a DCA in the City's CLUP, the policies in the City's CLUP are not applicable to the Banning Ranch property. Correspondence from the Coastal Commission during its review of the City's CLUP requested that references to the Banning Ranch property be removed. Because the City does not have a certified LCP, and the City's CLUP does not include the Banning Ranch property, the City acknowledges that any consideration of a Coastal Development Permit for the Project site would require a finding of consistency with the Chapter 3 policies of the Coastal Act. The Draft EIR provides an analysis of the proposed Project with the California Coastal Act as required by the State CEQA Guidelines Section 15125. Please refer to Sections 4.1 through 4.15 of the Draft EIR.

## **Response 5**

The City acknowledges the Coastal Commission's comments regarding Section 30240 of the Coastal Act and the importance of buffers for ESHA as well as the fact that both the Coastal Act and the City's CLUP identify the importance of protecting ESHA and avoidance of impacts to ESHA. Please refer to the Topical Response: ESHA.

As noted in the response to Comment 4, the Banning Ranch property is not included within the City's CLUP nor is an amendment being proposed at this time to include the Banning Ranch property in the City's CLUP. Consequently, while the CLUP may provide guidance it is not binding on the Banning Ranch property. The Draft EIR provides an analysis of the proposed Project with the California Coastal Act as required by the State CEQA Guidelines Section 15125. Please refer to Sections 4.1 through 4.15 of the Draft EIR.

The purpose of the Draft EIR is to analyze a proposed project's impact on the physical environment. It is not, in and of itself, a policy consistency analysis, except to the extent that such inconsistencies reveal environmental impacts that otherwise are not discussed. Section 4.6, Biological Resources, of the Draft EIR analyzes the proposed Project's impact on biological resources, including federal and State listed endangered and threatened species, sensitive plant and animal species, and specific habitats such as wetlands and vernal pools. All impacts to these resources would be mitigated or avoided with the Mitigation Program set forth in Section 4.6 of the Draft EIR, and therefore would be protected as against disruption of habitat values. The Draft EIR acknowledges that the Coastal Commission makes the determination as to whether any or all of these constitute ESHA under the Coastal Act, and application of the policies of the Coastal Act to the existing conditions on the Project site would be undertaken as part of the Coastal Commission's Coastal Development Permit process.

## **Response 6**

The Coastal Commission suggests that the EIR examine historical data on the use of the Project site on sensitive species and be updated to reflect that usage. The Coastal Commission states that ESHA determinations are made on site-specific circumstances. Please refer to the response to Comment 5 and Topical Response: ESHA. Section 4.6, Biological Resources, of the Draft EIR analyzes the Project's impacts on biological resources, including listed species and sensitive habitat. As the Coastal Commission correctly notes, an ESHA designation is based upon site-specific circumstances and is a finding to be made upon application of the policies of the California Coastal Act. The City anticipates that as part of the Coastal Commission's review of the proposed Project, it would make a determination of the presence/absence of ESHA on the Project site. That said, as noted above, Section 4.6, Biological Resources, of the Draft EIR analyzes the proposed Project's impact on biological resources, including federal and State listed endangered and threatened species, sensitive plant and animal species, and specific habitats such as wetlands and vernal pools. All impacts to these resources would be mitigated or avoided with the Mitigation Program set forth in



Section 4.6 of the Draft EIR, and therefore would be protected against significant disruption of habitat values, as required by Public Resources Code Section 30240. With respect to the suggestion that the EIR should evaluate historic data to determine whether the Project would cause impacts on the environment, this suggestion is not consistent with CEQA.

The State CEQA Guidelines Section 15125(a) states, "An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published". The Notice of Preparation was published on March 18, 2009. The Notice of Preparation was published on March 18, 2009. Using data that is over 20 years old would not be relying on the most current and accurate information required by CEQA. The most current information serves as the baseline conditions by which the lead agency determines whether an impact is significant. CEQA also states that the description of the environmental setting shall be no longer than is necessary to form an understanding of the significant effects of the proposed project and its alternatives. If historical data is not substantially different than the recent data available for conditions on site, it is not necessary to reference old data sources whether this older data provides no new/valuable information that would have a effect on the Project findings.

There are reasons where the incorporation of species data from past data would not be needed or appropriate for the proposed Project:

- Environmental site conditions have changed over that past 20 years which could result in a slightly different flora and fauna component of the Project site. This data would therefore not be current.
- Nomenclature has changed for many plant and wildlife species in the area and there would be confusion as to which species previous reports may have been referenced.
- Many of the previous survey reports do not have species compendia. It is unclear whether the survey compendia data is accessible.

## **Response 7**

The Coastal Commission letter questions whether the proposed Project can be found consistent with Public Resources Code Section 30240 because of recommended findings in a Staff Report prepared for the Coastal Commission with respect to the separate Sunset Ridge Park project. The Coastal Commission suggests that the EIR evaluate alternative intensities of development and alternative access to the site that is not dependent on access from West Coast Highway.

The City is aware of the Coastal Commission's recommendations that were prepared for the Sunset Ridge Park application including the recommended finding that the proposed arterial road would be inconsistent with the Coastal Act. However, the Coastal Commission has not yet acted on the City's CDP application for Sunset Ridge Park, and no findings or determinations have been made by the Coastal Commission as to the Sunset Ridge Park, including the access road that traverses the Newport Banning Ranch property. In addition, and more importantly, the Coastal Commission's suggestion included an acknowledgment that it would approve an access road from West Coast Highway under some circumstances.

The proposed Project provides access points from 15<sup>th</sup> Street, 16<sup>th</sup> Street, 17<sup>th</sup> Street, and 19<sup>th</sup> Street in addition to entry from West Coast Highway. The Newport Banning Ranch Draft EIR includes a Traffic Impact Analysis for the proposed Project and considers alternative intensities of development on the site which would reduce the amount of traffic on Bluff Road and North Bluff Road. Please refer to Section 7.0, Alternatives to the Proposed Project, of the Draft EIR.

The Coastal Commission's suggestion that the City should "not rely on access from West Coast Highway" is noted and contradicts the Coastal Commission's recommendation prepared for the Sunset Ridge Park application. The City determined that consideration of such a circulation system modification was not warranted under CEQA.

The State CEQA Guidelines Section 15126.6(c) sets forth the criteria for the selection of a range of reasonable alternatives for consideration in an EIR. "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects....Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts".

Eliminating access to the Project site from West Coast Highway would be inconsistent with Project Objective 1 and Project Objective 7 identified in Section 3.0, Project Description, of the Draft EIR, for the reasons set forth below. Project Objective 1 states "Provide a Project that implements the goals and policies that the Newport Beach General Plan has established for the Banning Ranch area". Eliminating access from West Coast Highway would fail to meet this Project objective because the Newport Beach General Plan Circulation Element Master Plan of Streets and Highways contemplates the construction of a four-lane divided Primary Road that would provide a new connection from West Coast Highway to 19<sup>th</sup> Street. The provision of a new connection from West Coast Highway to 19<sup>th</sup> Street is a fundamental goal of the City and both the development option (Residential Village) under the General Plan and property acquisition for open space (Open Space) land use option for the Banning Ranch property both contemplate development of an arterial extending inland from West Coast Highway through the Project site. Elimination of access from West Coast Highway would conflict with attainment of this Project Objective.

Project Objective 7 states "Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access". Eliminating access from West Coast Highway would not improve or enhance regional circulation as it would eliminate the circulation improvement in the City's General Plan Circulation Element that was designed to provide an alternate means of coastal access to provide regional traffic relief from existing coastal access routes (e.g., Newport Blvd and Superior and Pacific Coast Highway). The Draft EIR includes an exhibit showing the General Plan buildout traffic volumes for this roadway segment. The projected volumes indicate the need for a four-lane roadway in the General Plan buildout condition.

In addition to the City's General Plan Circulation Element Master Plan of Streets and Highways, the Bluff Road arterial is included in the Orange County Master Plan of Arterial Highways (MPAH). The Orange County MPAH is the regional transportation system administered by the Orange County Transportation Authority (OCTA). The variation (or roadway segment deletion) would also be inconsistent with the City's General Plan. Specifically, General Plan Goal CE 3.1, as implemented by Policies CE 3.1.2 and 3.1.3, require both integration, and regional consistency with the Orange County MPAH. Therefore, the inconsistency with the Orange County MPAH would preclude the proposed Project from meeting Project Objective 1 and Project Objective 7.

Eliminating access from West Coast Highway is considered infeasible. "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (State CEQA Guidelines §15364). The City's General Plan Circulation Element Master Plan of Streets

and Highways contemplates a new coastal access route extending through the Project site from West Coast Highway. A circulation system that eliminates access from West Coast Highway would conflict with the City's General Plan and thus be legally infeasible as it would be inconsistent with the City's General Plan. In addition, the alternative would be inconsistent with the Orange County MPAH. The elimination of this road which has been planned and anticipated by both the City and County in adopted land use planning documents makes this suggested circulation option infeasible. For example, a condition of the City's acceptance of Measure M (Transportation Ordinance and Plan) funds from the County of Orange was the implementation of the Orange County MPAH, including Bluff Road. A circulation system that does not include Bluff Road accessed from West Coast Highway would be legally infeasible from the City's perspective as it would be contrary to the terms of the agreement under which it accepts Measure M funds. Orange County voters approved the renewal of Measure M (M2) on November 7, 2006 which generates revenue from a ½ percent sales tax in Orange County in order to fund transportation facilities and services. In order to be eligible for this funding program, the City was required to enter into a Master Funding Agreement with OCTA and fulfill an annual eligibility process. Eligibility packages are due to OCTA by June 30 of each year. One eligibility requirement is that the City's General Plan Circulation Element must be consistent with the Orange MPAH. Further, the City of Newport must submit a resolution attesting that no unilateral reduction in lanes has been made on any Orange County MPAH arterial.

Finally, eliminating access from West Coast Highway would not avoid or substantially lessen all of the significant environmental impacts of the proposed Project, and could create new significant impacts when compared to the proposed Project. With respect to biological resources, it has been suggested that eliminating access from West Coast Highway would avoid impacts to two areas adjacent to the proposed access road. Although construction of Bluff Road would affect sensitive vegetation communities, the Draft EIR concludes that these impacts can be mitigated to a less than significant level. Moreover, during consideration of the City's Sunset Ridge Park project, an access road from West Coast Highway generally along the alignment of Bluff Road was analyzed and an alignment that avoided the Coastal Commission-designated ESHA was determined to be feasible.

As part of its evaluation of these comments, the City considered the traffic impacts of eliminating access from West Coast Highway and believes that the elimination of Bluff Road would create burdens on the existing circulation system. This belief is based on the fact that Bluff Road is anticipated on the Orange County MPAH to serve regional traffic in addition to traffic generated by the proposed Project. Therefore, eliminating project access from West Coast Highway would result in the continued reliance, use, and impact to the existing arterials including Newport Boulevard, West Coast Highway, Superior Avenue, and Placentia Avenue.

The City evaluated whether the elimination of access from West Coast Highway would preclude significant unavoidable noise impacts to certain residences in the Newport Crest condominium development. Noise impacts from future traffic on Bluff Road and 15th Street were evaluated in the Draft EIR. This analysis establishes that, after mitigation, noise levels at existing residences in the Newport Crest development would be considered "Clearly Compatible" or "Normally Compatible", and that the resulting exterior and interior noise levels at these residences would remain consistent with the City of Newport Beach noise standards (MMs 4.12-6 and 4.12-7). However, the analysis also confirms that long-term noise increases at some Newport Crest residences would remain above the 5 dBA significance criterion for noise increase. Therefore, the proposed Project's noise impacts as to some of the Newport Crest residences are significant and unavoidable. Although the elimination of access from West Coast Highway may reduce or preclude this significant impact if Bluff Road were eliminated entirely, the elimination of this access from West Coast Highway could still allow for a circulation system that includes access from 15<sup>th</sup> Street and the construction of North Bluff Road. As such, this modification could result

in other significant noise impacts if access to the Project site was directed away from West Coast Highway to 15<sup>th</sup> Street. Specifically, the City believes that the redistribution of vehicular traffic would result in significant noise impacts to other off-site sensitive receptors including schools and other residents in the vicinity.

The City has carefully examined whether to analyze the elimination of access off of West Coast Highway and determined that this suggestion should be rejected from further consideration. For the reasons set forth above, elimination of a Bluff Road access from West Coast Highway conflicts with key proposed Project objectives regarding implementation and consistency with the City's General Plan Circulation Element and would frustrate attainment of the Project objectives. Bluff Road through the property is reflected in the City's General Plan Circulation Element Master Plan of Streets and Highways and the Orange County MPAH. The City cannot eliminate this planned circulation improvement without amending its Circulation Element, and cannot unilaterally amend the County's MPAH. Further, eliminating Bluff Road would place the City in conflict with its obligations assumed in connection with its acceptance of Measure M funds. Finally, eliminating Bluff Road access from West Coast Highway would not substantially lessen impacts to biological resources and would eliminate an alternative means of coastal access.

For these reasons, the City determined that the consideration of the elimination of a roadway connection from West Coast Highway was not warranted.

## **Response 8**

Impacts to special status habitats and species are addressed in Section 4.6, Biological Resources on pages 4.6-48 through 4.6-90. For additional response regarding the proposed Project and the Coastal Act, please refer to Topical Response: ESHA. The Draft EIR's analysis of biological resources has concluded that pursuant to CEQA, while the proposed Project is expected to have impacts on sensitive biological resources, these significant impacts can be mitigated to less than significant levels with implementation of the Mitigation Program (Project Design Features, Standard Conditions, and Mitigation Measures) identified in the Draft EIR. Additionally, consultation has been initiated with the USFWS pursuant to Section 7 of the federal Endangered Species Act for potential impacts to the San Diego family shrimp and the coastal California gnatcatcher. As a part of the Section 7 Consultation process, the U.S. Fish and Wildlife Service (USFWS) is currently reviewing the proposed Project with respect to its consistency with the federal Endangered Species Act, and the issuance of a Biological Opinion is expected. Issuance of a Biological Opinion ensures that any potential impacts to listed species are fully evaluated and that appropriate conservation measures are implemented in a manner that minimizes potential take of endangered species and mitigating any potential impacts. The special status species identified by the Coastal Commission in this comment have been identified and potential impacts were evaluated in the Draft EIR; a Mitigation Program has been recommended to avoid and reduce impacts to a less than significant level. It was the conclusion of the Draft EIR that significant impacts can be mitigated to less than significant levels and would not result in a net loss of habitat for sensitive species. The Mitigation Program would provide, among other things, for habitat restoration, increased carrying capacity for sensitive species through habitat restoration, and long-term habitat protection which is intended to increase the quality of the remaining habitat upon Project implementation. The City disagrees with the Coastal Commission's characterization of the proposed Project as resulting in habitat fragmentation. As noted below, revegetation following oilfield remediation activities would result in higher quality habitat due to invasive species removal; removal of human activity and disturbance related to oilfield operations (oil activities would be consolidated into two on-site locations); and availability of larger blocks of contiguous native habitat for these species in the open space area.

## Response 9

The Coastal Commission's comments regarding non-native grassland are noted. As addressed on page 4.6-62 of the Draft EIR, suitable foraging habitat is present for a variety of raptor species on the Project site. The permanent loss of approximately 124.83 acres of foraging habitat for these raptor species would contribute to the ongoing regional and local loss of foraging habitat. The Draft EIR finds this impact to be significant. That said, revegetation following oilfield remediation activities would result in higher quality habitat due to invasive species removal; removal of human activity and disturbance related to oilfield operations (oil activities would be consolidated into two on-site locations); and availability of larger blocks of contiguous native habitat for these species in the open space area. Therefore, with implementation of Mitigation Measures (MMs) 4.6-1, 4.6-2, 4.6-4, and 4.6-5, this impact would be reduced to a less than significant level. These measures require the restoration of coastal sage scrub, grassland habitat, marsh habitat, and riparian areas at a ratio from 0.5:1 to 3:1 for approximately 119.56 acres of restoration. In addition, the proposed Project would preserve approximately 85.97 acres of additional habitat on site. The Project also includes Project Design Features (PDFs) 4.6-1 through 4.6-4, which require the designation and methodology of habitat restoration/preservation and indirect effect minimization measures which would provide conservation and avoidance value to the raptor foraging areas. The Draft EIR concludes that the proposed Project would provide sufficient foraging habitat for raptor species.

## Response 10

The City acknowledges the Coastal Commission's comments regarding Section 30240 of the Coastal Act. The purpose of the Draft EIR is to evaluate a project's impact on biological resources, including all of the resources identified by the Coastal Commission as sensitive, and to identify measures by which significant impacts to those biological resources could be mitigated. The Draft EIR finds that impacts to biological resources can be mitigated to less than significant levels. Section 7.0, Alternatives to the Proposed Project, of the Draft EIR addresses alternatives to Applicant's proposal. These alternatives include a No Project/No Development Alternative, the General Plan Open Space Designation Alternative; and alternatives which reduced the development footprint area. The No Project/No Development Alternative assumes retention of the property as an active oilfield. The General Plan Open Space Alternative assumes the site is developed under the City's General Plan Primary Use of open space which includes a 20- to 30-acre Community Park and a Primary Road from West Coast Highway to 19<sup>th</sup> Street. These two alternatives as well as the alternative that examined a smaller footprint of development would reduce but not avoid all impacts to sensitive biological resources. Any use of the property would require soils remediation either subsequent to the termination of oil operations or preceding any development uses on the site. As addressed in the Draft EIR, remediation efforts would also have biological impacts. Please also refer to Topical Response: ESHA.

## Response 11

The Coastal Commission's comments regarding the potential for bird strikes and the use of transparent glass walls are noted. The City does not currently have standards for bird-safe buildings. However, as a part of the City's Site Development Review process, the appropriateness of the use of transparent glass walls would be addressed. Alternative materials would be required where transparent glass is not appropriate. In addition, MM 4.6-6 has been revised to address potential bird strike issues as follows:

**MM 4.6-6**      ***Migratory Bird Treaty Act. ...To protect bird species on site, any front glass railings, screen walls, fences and gates that occur***

adjacent to Project natural open space areas shall be required to use materials designed to minimize bird strikes. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless an ultraviolet-light reflective coating specially designed to reduce bird strikes by reducing reflectivity and transparency is also used. Any coating or shall be installed to provide coverage consistent with manufacturer specifications. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications. Prior to issuance of a grading permit, the Applicant shall submit plans showing the location, design, height and materials of glass railings, fences, screen walls and gates for the review and approval to the City and a qualified Biologist.

## Response 12

The Draft EIR addresses Section 30213 of the Coastal Act which states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

As addressed on page 4.8-24 of Section 4.8, Recreation and Trails, the Draft EIR acknowledges that the resort inn is not proposed as a “lower cost” facility. While this section of the Coastal Act encourages lower cost facilities, it specifically notes that the California Coastal Commission cannot mandate low cost hotel rooms for privately owned and operated hotels. Should the Applicant modify its resort inn to provide lower cost rates, this would not result in a new environmental impact associated with the proposed Project.

With respect to the provision of lower cost public recreational facilities, please refer to Section 4.8, Recreation and Trails. The proposed Project’s public parks are intended to provide lower cost recreational facilities including access through the Project site to on-site parks, connections to regional trails, and access to the beach from the proposed pedestrian and bicycle bridge over West Coast Highway. The Project proposes approximately 51.4 gross (42.1 net) acres of public parks, including an approximately 26.8-gross-acre (21.7-net-acre) Community Park; an approximately 20.9-gross-acre (17.5-net-acre) Bluff Park; approximately 3.7 gross (2.9 net) acres of Interpretive Parks; and bicycle, multi-use, and pedestrian trails. All of these parks and trails would be publically accessible.

The City’s decision-makers will considered the proposed land uses as part of this Project. However, it should be noted that when the City undertook its General Plan update, it evaluated the types of land uses it deemed appropriate for the Banning Ranch site and determined that a coastal resort inn would be an appropriate visitor-serving use and established the size (75 rooms) of the resort as part of the General Plan; this is reflected in the 2006 General Plan

Update. The provision of visitor-serving uses on Project site and in particular the 75-room resort inn were considered in light of other visitor-serving uses and recreational uses available in the City as part of the General Plan update process and determined to be desirable in order to provide additional overnight visitor-serving accommodations in this area of the City.

### **Response 13**

As identified in Section 3.0, Project Description, of the Draft EIR, consolidation of the oil operations would allow for site development as proposed by the Applicant while permitting ongoing oil production operations.

With respect to site development, please refer to Section 3.0, Project Description, and Section 4.5, Hazards and Hazardous Materials, which identify the proposed development uses, oilfield production uses, and methodology for oilfield remediation. Approximately 252 acres (63 percent) of the Project site are proposed for natural resources protection in the form of open space and habitat restoration. Of the 252 acres, approximately 16.5 acres would be used for two oil consolidation sites that would be linked by a related access road and utility corridor. The Open Space Preserve would be comprised of: (1) the existing 4.8-gross-/net-acre oil operations site accessed from West Coast Highway that is also used by the City for oil production; (2) a partially developed 8.6-gross/net-acre oil site near the middle of the Lowland area; and (3) an oil access road connecting the two oil consolidation sites to be used for drilling rigs, maintenance trucks, and other oil facility-related purposes. The Draft EIR distinguishes between Open Space Preserve and development uses which would include parks, residential, retail, and hotel uses. The consolidated oil site are included in the open space acreage calculation but are assumed as impact areas for the purpose of the biological resources analysis.

With respect to potential impacts to biological resources, Section 4.6, Biological Resources, of the Draft EIR addresses the methodology used to evaluate impacts associated with the consolidated oil sites, oilfield remediation (pipeline removal and sump and oil contaminant remediation areas), and pipe remediation. Potential impacts have been evaluated and a Mitigation Program set forth in Section 4.6 of the Draft EIR.

With respect to the duration of oil operations on the Project site, please refer to Section 3.0, Project Description, page 3-2 which states "The timing of the abandonment of the oil consolidation sites has not been determined, but it is anticipated that oil production on the Project site would continue for an additional 30 to 40 years from now. Given the uncertainty of the timing, any impacts associated with the remediation of the consolidation sites will be addressed at the time the abandonment is proposed".

### **Response 14**

Please refer to Section 4.3, Geology and Soils, of the Draft EIR which addresses landform alteration. No significant impacts are anticipated.

### **Response 15**

As discussed in Section 4.3, Geology and Soils, page 4.3-16 of the Draft EIR, the Project assumes that fault setback zones are connected (i.e., no habitable structures have been placed in this area). As discussed on page 4.3-16 and in Mitigation Measures 4.3-2 and 4.3-3, if the Project were subsequently be changed to include habitable structures in these zones additional fault trenching would be required. Quantitative slope stability analyses would be performed for all proposed cut and fill slopes once final development plans are prepared.

## **Response 16**

A Preliminary Water Quality Management Plan (WQMP) has been prepared and is incorporated into the Final EIR; see Appendix A to this Responses to Comments document. As addressed in Section 4.4, Hydrology and Water Quality, of the Draft EIR, Standard Condition 4.4-4 requires that, prior to the issuance of grading permits, the Applicant would be required to prepare and submit a Water Quality Management Plan (WQMP) for the Project, subject to the approval of the City of Newport Beach Community Development Department, Building Division and Code and Water Quality Enforcement Division. The WQMP shall include appropriate BMPs to ensure Project runoff is adequately treated.

## **Response 17**

During the CDP application process, the California Coastal Commission would establish ESHA boundaries. The locations of any water quality features would either be adjusted as necessary to avoid impacts to any designated ESHA, or if upon balancing conflicting Coastal Act policies pursuant to Coastal Act Section 30007.5, the Coastal Commission determines that the beneficial water quality impacts can be balanced against the policies of Section 30240, these basins may be permitted in the proposed locations. This will be a case-by-case determination based upon the water quality benefits that are sought and an evaluation of the impacts to sensitive habitat, and the value of habitat that would result after implementation of the proposed basin improvements.

## **Response 18**

The comment is noted. The WQMP would identify a combination of LID features meeting Countywide 2011 Model WQMP, CASQA, California Coastal Commission, and City of Newport Beach (Council Policy L-18 and L-22) standards. BMPs would be designed to treat runoff from the 85<sup>th</sup> percentile, 24-hour storm event. The proposed Project's storm drain facilities have been designed to mitigate increased flows from the developed condition to be less than or the same as the existing condition. The WQMP would identify any hydrologic conditions of concern pertaining to the 2-year storm event for the existing and proposed conditions in accordance with the Fourth Term MS4 Permit for North Orange County. A SWPPP would be prepared and submitted with the Coastal Development Permit application package submitted to the California Coastal Commission to the level of detail available at the time. Ultimately, a more comprehensive SWPPP based on approved detailed construction and phasing plans would be prepared and submitted to the SWRCB for obtaining coverage under the Construction General Permit (Order No. 2009-0009-DWQ) in conjunction with final grading plans.

## **Response 19**

Please refer to Topical Response: Infiltration Feasibility and Low Impact Development Features.

## **Response 20**

The Preliminary WQMP prepared for the proposed Project includes a discussion of the 2-year volumes and flow rates for the existing and proposed conditions in accordance with the Fourth Term MS4 Permit for North Orange County (please see Appendix A to this Responses to Comments document). The Preliminary WQMP includes a discussion on how hydromodification impacts would be avoided based on the design of the storm drain system including preservation of existing flow rates and volumes to the existing arroyos and delivery of storm water directly to tidally influenced water bodies not subject to hydromodification. A Final WQMP (in accordance



with the approved Model WQMP) would be prepared as part of the Coastal Development Permit application package submitted to the California Coastal Commission.

### **Response 21**

The comment is noted. The Preliminary WQMP (see Appendix A to this Responses to Comments document) prepared for the proposed Project includes the all of the site design and source control (structural and non-structural) BMPs anticipated for the Project based on the level of detail provided and available in the Draft EIR. The Final WQMP prepared in conjunction with the Coastal Development Permit application package to confirm which of these specific site design and source control BMPs would be used in the final plan.

### **Response 22**

As discussed in the Draft EIR, the delineation included identification of wetlands and riparian habitat subject to regulation under the California Coastal Act by the Coastal Commission using the methodology that relies on only one of three characteristics (i.e., a predominance of wetland vegetation; or a predominance of hydric soils; or wetland hydrology). As the Coastal Commission has indicated in its comment letter, the “pools may also qualify” (emphasis added) as defined wetlands under the Coastal Act because of the presence of San Diego fairy shrimp. Of the seven on-site pools that support San Diego fairy shrimp, two were identified as Coastal wetlands in the Draft EIR. The remaining five pools that support San Diego fairy shrimp on site are not vernal pools. They are artificial pools created by excavation and berming in grasslands to protect oilfield access roads, oil sumps with contaminated soil, and low lying scrapes overlying existing oil pipelines. The City does not consider these areas to be Coastal Act-defined wetlands due to the lack of (1) a predominance of wetland vegetation, (2) predominance of hydric soils, or (3) wetland hydrology.

### **Response 23**

The comment sets forth provisions from the Coastal Act and the City's Coastal Land Use Plan (CLUP) regarding policies pertaining to wetlands resources. The City acknowledges the protection afforded wetlands under the Coastal Act and its CLUP. As noted in the Topical Response: Vernal Pools, a wetlands delineation of the Project site was performed using the Coastal Commission's definition of wetlands. The Applicant has sited development uses in recognition of its proximity to Coastal Act wetlands. With respect to the development proposed within mapped wetlands at the drainage courses, please refer to the response to Comment 17. This response addresses the water quality features that are proposed in this area and which, in order to maximize their effectiveness and the goal of improving coastal water quality, require the construction of these basins in the areas proposed. With respect to the other areas identified in the comment, wetland areas are buffered from adjacent development to protect against the degradation of the wetlands on the Project site. It should be noted that under current conditions, these wetlands exist in an operating oilfield and in some instances have been artificially created as a result of oil operations. Implementation of the proposed Project is intended to improve upon these existing conditions and provide habitat benefits in comparison to the current condition or the No Project Alternative.

### **Response 24**

The Coastal Commission's question regarding whether all permits were obtained concerns a matter of regulatory process under the jurisdiction of the Coastal Commission and does not present a comment regarding the adequacy of the environmental impact analysis in the Draft

EIR. The City will provide that information to the Coastal Commission separately outside of these responses to comments on the environmental impact analysis presented in the Draft EIR.

## **Response 25**

The opinions of the Coastal Commission regarding the adequacy of testing of the cultural resource sites are noted. For purposes of analyzing potential impacts under CEQA, the Draft EIR provides sufficient information. Mitigation identified is consistent with the directives of the State CEQA Guidelines Section 15126.4 (b). The City acknowledges the Coastal Commission's comments regarding the preparation of a comprehensive Archaeological Research Plan. The commenter is referred to Section 4.13, Cultural and Paleontological Resources, of the Draft EIR; pages 4.13-7 through 4.13-10 describe the methodology used in preparation of the cultural and paleontological analyses. Please also refer to Appendix J which provides more detail information regarding resources on the Project site.

As discussed in the Draft EIR, many of the archaeological sites on the Project site have been disturbed or destroyed as a result of past activities on the property, including oil operations, World War II construction of military facilities, and Caltrans grading activities. For these reasons, many of the recorded archaeological sites are not considered significant because they lack integrity as a result of prior disturbance. For those sites that are identified in the Draft EIR as significant and which cannot be avoided and preserved in place, the City will advise the Applicant to have prepared an archaeological mitigation plan and submit an Archaeological Research Plan to the Coastal Commission in support of a Coastal Development Permit for the archaeological work.

## **Response 26**

As identified on Table 4.13-1 of the Draft EIR, the previous archaeological investigations occurred in the 1980s by archaeological consultants under contract to parties other than the Applicant or the City. The City does not know the location of the artifacts collected by previous investigators is not known. The artifacts collected during the recent testing investigation are currently being stored at BonTerra Consulting with final disposition for curation in perpetuity to be determined at a later time.

With respect to burials, there are no known burials on the property. The prior archaeological test investigations, as with all test investigations, are not designed to test for the presence or absence of burials. It is not reasonable to test random areas of the Project site to look for burials since they could be present anywhere on the site and such testing would result in unnecessary disturbance. Any burials that may be present may be discovered during monitoring of grading and other subsurface work at the site.

## **Response 27**

Adequate testing investigation in combination with data from previous excavations provides sufficient information from which to make a significance determination for each of the three archaeological sites deemed significant: CA-ORA-839, CA-ORA-844B, and CA-ORA-906. Because at least portions of these three sites would be directly impacted by grading and/or removal of old oilfield infrastructure, it is not feasible to completely preserve all of them. If the oil infrastructure can be left in place, it should be possible to completely preserve CA-ORA-839 and CA-ORA-844B. Mitigation Measure (MM) 4.13-2 requires preservation in place where feasible, and data recovery if needed in conjunction with removal of infrastructure. However, as the Project is currently proposed, CA-ORA-906 would be destroyed by grading and would undergo data recovery excavation. Where preservation is not feasible, appropriate mitigation is provided

for appropriate data recovery and curation. This is consistent with the directives of State CEQA Guidelines Section 15126.4 (b). With respect to Native American monitoring and as addressed in Section 4.13 of the Draft EIR, a representative of the Juaneño Band of Mission Indians, Acjachemen Nation, Anthony Rivera, was present on site during all archaeological excavations and was afforded the opportunity to examine excavation units and artifact discoveries. Further, the EIR Mitigation Program requires Native American monitoring during grading.

Because reasonable mitigation is proposed to mitigate any impacts to cultural resources, the City disagrees with the Coastal Commission's conclusion that the proposed Project is inconsistent with Public Resources Code Section 30244 (requiring the imposition of mitigation measures to reduce impacts to archeological resources).

### **Response 28**

The City respectfully disagrees that it is necessary to reprint sections of the CEQA Statute in the EIR. Section 10, Glossary and List of Acronyms, provides definitions of an EIR. Both Sections 1.0 and 2.0 of the Draft EIR identify the mandates for an adequate EIR. The level of detail provided in the Draft EIR provides sufficient information to enable the reader to understand the purpose of an EIR, the proposed Project, as well as the associated regulatory requirements for Project implementation.

### **Response 29**

The City again disagrees with the Coastal Commission's suggestion that the proposed Project is too conceptual to be adequately analyzed and evaluated for the purposes of environmental impacts. State CEQA Guidelines Section 15124 requires only a general description of a project's technical, economic, and environmental characteristics. The court in *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 27, specifically rejected the notion that "only precise engineering designs provide the necessary detail to analyze the environmental consequences of the entire project under CEQA". To the extent that the Coastal Commission suggests that environmental review should wait for more specific Project designs, the City also disagrees. CEQA contemplates that environmental review occur "as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment" (CEQA Guidelines §15004, subd. (b)).

The Draft EIR adequately addresses the potential environmental impacts associated with the proposed Project. In most instances, more detail is not needed. Unless an impact would occur because of the type of land use, it is unnecessary to distinguish an impact on a use by use basis. For example, grading impacts to biological resources would not be different if the land use were a single-family residence or a multi-family residential use. However, where impacts would be different based on the use, the Draft EIR evaluates these differences. For example, night lighting effects are different between the active and non-active components of the Community Park as well as other land uses. Another example would be where the Draft EIR addresses land use compatibility between off-site and on-site uses; one factor considered in the evaluation was the allowable height of proposed land uses when compared to existing and allowable off-site land uses.

### **Response 30**

The Coastal Commission has misinterpreted the implementation of the proposed Project as outlined in Section 3.0, Project Description. The Applicant is requesting that the portion of the property that is within unincorporated County of Orange but within the City's Sphere of Influence

be annexed into the City of Newport Beach (City). As addressed in the response to Comment 12 and Section 3.10 of the Draft EIR Project Description, the Draft EIR recognizes that Banning Ranch, inclusive of the Newport Banning Ranch site and the Newport-Mesa Unified School District property, is designated as a Deferred Certification Area (DCA) and a Coastal Development Permit is needed from the Coastal Commission to allow for site development.

Should the City approve the Project and associated discretionary and ministerial actions, the Applicant would request approval of a corresponding Coastal Development Permit from the Coastal Commission for the Master Development Plan and Tentative Tract Map No. 17308. The Coastal Act does not define “Master Coastal Development Permit”. All permits issued by the Coastal Commission are referred to as “Coastal Development Permits”; therefore, all references to a “Master Coastal Development Permit” are hereby incorporated into the Final EIR as “Coastal Development Permit”.

### **Response 31**

In 1973, after passage of Proposition 20, the oil operator applied for an exemption that was issued by the South Coast Regional Zone Conservation Commission (the predecessor of the current Coastal Commission) for ongoing oil operations. As noted in the response to Comment 3, the oil operator is West Newport Oil Company (WNOC) which is a separate entity from the Project Applicant, Newport Banning Ranch LLC. Newport Banning Ranch LLC holds an option to develop the surface of the property where as WNOC owns the subsurface rights to extract oil.

Exemptions were granted to activities that were being conducted prior to passage of Proposition 20 and allowed for their continued operation. The exemption continues in effect after enactment of the California Coastal Act in 1976 and allows for the continuation of oil operations and exempts those activities from the requirement to obtain permits and other approvals pursuant to the California Coastal Act. The exemption permits the oil operator to continue to operate the oilfield, including drilling new wells, conduct oilfield maintenance work, and clean up and abandon wells.

### **Response 32**

The Coastal Commission suggests that an EIR, to be adequate, must explain which elements of a project result in a particular impact, rather than merely addressing the impacts of the project generally. It is unclear as to the purpose or the benefit of the breakdown. As explained in the response to Comment 29, in most cases it is unnecessary to distinguish an impact on a use-by-use basis. For example, grading impacts to biological resources would not be different if the land use were a single-family residence or a multi-family residential use. In other words, the CEQA analysis does not assume that physical disturbances would result in different types of impacts to biological resources depending on the land use (e.g., park, residential). Where impacts would be different based on the use, however, the Draft EIR evaluates these differences. The analysis in the CEQA documentation is appropriate for the actions that are being considered by the City associated with the proposed Project.

### **Response 33**

The comment is noted.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

Edmund G. Brown, Governor

**DEPARTMENT OF TRANSPORTATION**

District 12  
3347 Michelson Drive, Suite 100  
Irvine, CA 92612-8894  
Tel: (949) 724-2267  
Fax: (949) 724-2592

**Comment Letter S2**



*Flex your power!  
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**FAX & MAIL**

**November 8, 2011**

Mr. Patrick J. Alford  
City of Newport Beach  
Planning Department  
3300 Newport Blvd./P.O. Box 1768  
Newport Beach, CA. 92658

File: IGR/CEQA  
SCH#: 20090031061  
Log #: 2235B  
SR-1 and 55

**Subject: Newport Banning Ranch Project**

Dear Mr. Alford,

Thank you for the opportunity to review and comment on the **Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project**. The proposed project calls for the development of 1,375 residential dwelling units, 75,000 square feet of commercial uses, and a 75 room resort on approximately 91 acres of the 401 total acres. Approximately 243 acres would be in open space, trails, and consolidated oil facilities, the latter comprising approximately 20 acres. Park facilities would be provided on approximately 45 acres; roadways would occupy approximately 22 acres. Roadways would be extended through the site to provide a north-south connection from SR-1 to 19<sup>th</sup> Street; additional roadway connections would be provided to 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Streets. A bicycle/pedestrian bridge is also proposed that crosses SR-1 near the project location. The nearest State routes to the project site are SR-1 and SR-55.

**The California Department of Transportation (Department), District 12 is a responsible agency on this project and has the following comments:**

- |   |   |
|---|---|
| 1. If any project work (e.g. storage of materials, street widening, emergency access improvements, sewer connections, noise walls, storm drain improvements, street connections, etc.) will occur in the vicinity of the Department's Right-of-Way, an encroachment permit is required prior to commencement of any work. Please allow four (4) weeks for a complete submittal to be reviewed and for a permit to be issued. When applying for an Encroachment Permit, incorporate environmental documentation, SWPPP/ WPCP, hydraulic calculations, traffic control plans, geotechnical analysis, right-of-way certification and all relevant design details including design exception approvals. For specific details on the Department's Encroachment Permits procedure, please refer to the Department's Encroachment Permits Manual. The latest edition of the manual is available on the web site: <a href="http://www.dot.ca.gov/hq/traffops/developserv/permits/">http://www.dot.ca.gov/hq/traffops/developserv/permits/</a> | 1 |
| 2. The DEIR assumes that the signalized intersection of SR-1 and Bluff Road will be part of the existing road network. At this time, the Department has not received an application for an  | 2 |

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Encroachment Permit that includes a traffic signal proposal from the City of Newport Beach for a SR-1/Bluff Road intersection. Upon receipt of an Encroachment Permit application the Department will utilize the latest MUTCD and the Caltrans Highway Design Manual with regards to minimum standard spacing from existing intersections to determine if signal warrants are met. Therefore, the signalized intersection should not be considered as an existing condition and the traffic analysis should be adjusted to reflect no existing intersection.	2 cont.
<p>3. If the City of Newport Beach is considering proposing a signalized intersection at SR-1 and Bluff Road to primarily serve the proposed development, it is by itself, an impact that will cause delay to SR-1 operation, capacity, and progression, as well as to the neighboring road system. The Department requests:</p> <ul style="list-style-type: none"> <li>a. An evaluation of the impact and its mitigation needs to be included as part of this study.</li> <li>b. The proposed traffic distribution needs to be adjusted to depict that at least 30% of the traffic trips will pass through the SR-1/Bluff Road intersection (20% from North SR-1 and 10% from South SR-1). The effect of this new distribution needs to be evaluated to determine the impact and, if required, viable mitigation measures.</li> <li>c. Direct impacts to the proposed intersection of Bluff Road and SR-1 shall include mitigation measures such as adding deceleration and acceleration lanes similar to the intersections at SR-55/SR-1 and Superior Road/SR-1.</li> </ul>	3
4. Will the proposed access to the project site from 15 <sup>th</sup> Street, 16 <sup>th</sup> Street, 17 <sup>th</sup> Street and 19 <sup>th</sup> Street be sufficient without access from SR-1?	4
5. This project will impact SR-1 and SR-55 corridors, including ramps and intersections. Impacts of development causing operating conditions to deteriorate to deficient levels of service, or impacts adding to an existing deficient level of service condition will require mitigation measures.	5
6. The Department has interest in working cooperatively to establish a Traffic Impact Fee (TIF) program to mitigate such impacts on a "fair share" basis. Local development project applicants would pay their "fair share" to an established fund for future transportation improvements on the state highway system. If there is an existing TIF program, it can be amended to include mitigation for the state highway system or a new TIF program may be considered. The Department requests the opportunity to participate in the TIF for state highway improvements.	6
7. The Department requests to participate in the process to establish and implement "fair share" mitigation for the aforementioned project impacts. The Department has an established methodology standard used to properly calculate equitable project share contribution. This can be found in Appendix B of the Department's Guide for the Preparation of Traffic Impact Studies which is available at: <a href="http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf">http://www.dot.ca.gov/hq/traffops/developserv/operationalsystems/reports/tisguide.pdf</a>	7
8. The Department, in accordance with Section 130 of the California Streets and Highways Code, may enter into a contract with the lead agency to provide the mitigation measures listed in the EIR. This may include construction of the mitigation measures, the advancement of funds (proportional to the fair-share cost) to pay for	8

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mitigation measures, project studies, or the acquisition of rights-of-way needed for future improvements to the state highway system.	8 cont.
9. In accordance with Deputy Directive 64-R1, complete streets, which develops integrated multimodal projects in balance with community goals, plans, and values, please include all modes of travel for the proposed improvements. The safety and mobility needs of all who have legal access to the transportation system must be addressed including requirements under the Americans with Disabilities Act of 1990.	9
10. If cultural or paleontological remains are discovered in or adjacent to Department right-of-way during excavation and/ or construction activities, all earth moving activity within and around the site area must be diverted until a qualified Department Archaeologist can assess the find. If human remains are discovered, State Health and Safety Code Section 7050.5 states that disturbances and activities shall cease. The County Coroner must be notified of the find immediately, so that they may ascertain the origin and disposition, pursuant to Public Resources Code Section 5097.98. In addition, Department Biologist must be notified of any	10
impacts to biological resources within the Department's right-of-way. These impacts must be coordinated with Department District Biologist and mitigated (if required) through the Regulatory/Resource Agencies. As a result, any and all regulatory/resource permits & agreements must be in place prior to the issuance of any encroachment permit to Department right-of-way.	11
11. Section 4.4 of the DEIR covers the Hydrology and Water Quality impacts for the proposed project. Section 4 of the DEIR references that Sub-watershed A of the proposed project site discharges to an existing Reinforced Concrete Box (RCB) on SR-1. Any discharges to the Department's drainage system will require the Newport Banning Ranch developers to apply for an encroachment permit. The Department will review the encroachment permit application to ensure compliance the latest Waste Discharge Requirements issued to the Department under the NPDES permit. The review will evaluate the applicant's WQMP and/or runoff management plan for the development to ensure that water quality impacts are addressed via permanent treatment BMPs as well as additional flows that may be generated with the increased impervious surface to ensure that the Department storm drain system can meet the capacity. In addition, the encroachment permit review process will review the applicant's temporary impacts to water quality as it pertains to the Department's right-of-way and any measures proposed to address those impacts (i.e. construction general permit, SWPPP, temporary BMPs).	12

Please continue to keep us informed of this project and any future developments, which could potentially impact State transportation facilities. If you have any questions or need to contact us, do not hesitate to call Damon Davis at (949) 440-3487.

Sincerely,

Christopher Herre, Branch Chief  
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research

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**November 7, 2011**

Mr. Patrick J. Alford  
City of Newport Beach  
Planning Department  
3300 Newport Blvd./P.O. Box 1768  
Newport Beach, CA. 92658

File: IGR/CEQA  
SCH#: 20090031061  
Log #: 2235B  
SR-1 and 55

**Subject: Newport Banning Ranch Project**

BC: Ryan Chamberlain, Deputy District Director, Planning and Local Assistance  
James Pinheiro, Deputy District Director Traffic Operations, Maintenance, and Permits  
Gary Slater, Branch Chief Traffic Operations North

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**Letter S2**      **California Department of Transportation, District 12**  
Christopher Herre, Branch Chief  
November 8, 2011

### **Response 1**

The comment is noted. Section 3.0, Project Description, pages 3-53 and 3-54 identify that activities located within Caltrans' right-of-way would require an Encroachment Permit. An Encroachment Permit would be required for widening and improvements to West Coast Highway, modifying the reinforced concrete box (RCB) culvert in West Coast Highway, and constructing a pedestrian and bicycle bridge over West Coast Highway. All activities must be in compliance with Caltrans Statewide National Pollutant Discharge Elimination System (NPDES) Permit.

### **Response 2**

The Project proposes a signalized intersection on West Coast Highway at Bluff Road. The Traffic Impact Analysis prepared for the Draft EIR does not assume this intersection as a part of existing conditions. Please refer to Section 4.9-1, Transportation and Circulation. An encroachment permit application has not been filed with Caltrans because no action has yet been taken by the City of Newport Beach with respect to consideration of Project approval.

### **Response 3**

The Project trip distribution is based on the results of select zone traffic model runs per the Newport Beach Traffic Model (NBTM). The NBTM is consistent with the Orange County Transportation Authority's OCTAM (Orange County Transportation Analysis Model). Caltrans has not provided reason why the distribution assumptions should be modified.

As a point of clarification, the construction of an intersection on West Coast Highway at Bluff Road is consistent with the City of Newport Beach General Plan Circulation Element Master Plan of Streets and Highways and Orange County Master Plan of Arterial Highways. Although Bluff Road/North Bluff Road would be constructed as a part of the proposed Newport Banning Ranch Project, said improvements are proposed and anticipated by the City and the County to serve subregional vehicular traffic. Bluff Road/North Bluff Road between West Coast Highway and 19<sup>th</sup> Street is assumed through the Project site in the City's General Plan under the land use designation of OS/RV. Therefore, whether the property's development is limited to a public Community Park or as proposed by the Applicant, a four-lane road through the property is assumed. With the completion of Bluff Road and the extensions of 15<sup>th</sup> Street, 16<sup>th</sup> Street, and 17<sup>th</sup> Street to Bluff Road and the connection of North Bluff Road to 19<sup>th</sup> Street and West Coast Highway, current traffic patterns in the area can be expected to change. A portion of the existing traffic in the area, which is currently dependent on Superior Avenue and Newport Boulevard to get to West Coast Highway, is expected to use these roadways through southwest Costa Mesa to take advantage of the new Bluff Road/North Bluff Road connection to West Coast Highway.

With respect to proposed improvements to West Coast Highway across the Project frontage, these improvements are described on page 3-21, Section 3.0, Project Description, of the Draft EIR.

### **Response 4**

Caltrans' asks whether access to the Project site would be adequate without a connection from West Coast Highway. The proposed Project provides access points from 15<sup>th</sup> Street, 16<sup>th</sup> Street,

17<sup>th</sup> Street, and 19<sup>th</sup> Street in addition to entry from West Coast Highway. The City determined that consideration of such a circulation system modification was not warranted under CEQA.

The State CEQA Guidelines Section 15126.6(c) sets forth the criteria for the selection of a range of reasonable alternatives for consideration in an EIR. “The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects....Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts”.

Eliminating access to the Project site from West Coast Highway would be inconsistent with Project Objective 1 and Project Objective 7 identified in Section 3.0, Project Description, of the Draft EIR, for the reasons set forth below. Project Objective 1 states “Provide a Project that implements the goals and policies that the Newport Beach General Plan has established for the Banning Ranch area”. Eliminating access from West Coast Highway would fail to meet this Project objective because the Newport Beach General Plan Circulation Element Master Plan of Streets and Highways contemplates the construction of a four-lane divided Primary Road that would provide a new connection from West Coast Highway to 19<sup>th</sup> Street. The provision of a new connection from West Coast Highway to 19<sup>th</sup> Street is a fundamental goal of the City and both the development option (Residential Village) under the General Plan and property acquisition for open space (Open Space) land use option for the Banning Ranch property both contemplate development of an arterial extending inland from West Coast Highway through the Project site. Elimination of access from West Coast Highway would conflict with attainment of this Project Objective.

Project Objective 7 states “Provide for roadway improvements to improve and enhance regional circulation, minimize impacts of Project development on the existing circulation system, and enhance public access while not developing more roadways than are needed for adequate regional circulation and coastal access”. Eliminating access from West Coast Highway would not improve or enhance regional circulation as it would eliminate the circulation improvement in the City’s General Plan Circulation Element that was designed to provide an alternate means of coastal access to provide regional traffic relief from existing coastal access routes (e.g., Newport Blvd and Superior and Pacific Coast Highway). The Draft EIR includes an exhibit showing the General Plan buildout traffic volumes for this roadway segment. The projected volumes indicate the need for a four-lane roadway in the General Plan buildout condition.

In addition to the City’s General Plan Circulation Element Master Plan of Streets and Highways, the Bluff Road arterial is included in the Orange County Master Plan of Arterial Highways (MPAH). The Orange County MPAH is the regional transportation system administered by the Orange County Transportation Authority (OCTA). The variation (or roadway segment deletion) would also be inconsistent with the City’s General Plan. Specifically, General Plan Goal CE 3.1, as implemented by Policies CE 3.1.2 and 3.1.3, require both integration, and regional consistency with the Orange County MPAH. Therefore, the inconsistency with the Orange County MPAH would preclude the proposed Project from meeting Project Objective 1 and Project Objective 7.

Eliminating access from West Coast Highway is considered infeasible. “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors (State CEQA Guidelines §15364). The City’s General Plan Circulation Element Master Plan of Streets and Highways contemplates a new coastal access route extending through the Project site from West Coast Highway. A circulation system that eliminates access from West Coast Highway

would conflict with the City's General Plan and thus be legally infeasible as it would be inconsistent with the City's General Plan. In addition, the alternative would be inconsistent with the Orange County MPAH. The elimination of this road which has been planned and anticipated by both the City and County in adopted land use planning documents makes this suggested circulation option infeasible. For example, a condition of the City's acceptance of Measure M (Transportation Ordinance and Plan) funds from the County of Orange was the implementation of the Orange County MPAH, including Bluff Road. A circulation system that does not include Bluff Road accessed from West Coast Highway would be legally infeasible from the City's perspective as it would be contrary to the terms of the agreement under which it accepts Measure M funds. Orange County voters approved the renewal of Measure M (M2) on November 7, 2006 which generates revenue from a ½ percent sales tax in Orange County in order to fund transportation facilities and services. In order to be eligible for this funding program, the City was required to enter into a Master Funding Agreement with OCTA and fulfill an annual eligibility process. Eligibility packages are due to OCTA by June 30 of each year. One eligibility requirement is that the City's General Plan Circulation Element must be consistent with the Orange MPAH. Further, the City of Newport must submit a resolution attesting that no unilateral reduction in lanes has been made on any Orange County MPAH arterial.

Finally, eliminating access from West Coast Highway would not avoid or substantially lessen all of the significant environmental impacts of the proposed Project, and could create new significant impacts when compared to the proposed Project. With respect to biological resources, it has been suggested that eliminating access from West Coast Highway would avoid impacts to two areas adjacent to the proposed access road. Although construction of Bluff Road would affect sensitive vegetation communities, the Draft EIR concludes that these impacts can be mitigated to a less than significant level.

As part of its evaluation of these comments, the City considered the traffic impacts of eliminating access from West Coast Highway and believes that the elimination of Bluff Road would create burdens on the existing circulation system. This belief is based on the fact that Bluff Road is anticipated on the Orange County MPAH to serve regional traffic in addition to traffic generated by the proposed Project. Therefore, eliminating project access from West Coast Highway would result in the continued reliance, use, and impact to the existing arterials including Newport Boulevard, West Coast Highway, Superior Avenue, and Placentia Avenue.

The City evaluated whether the elimination of access from West Coast Highway would preclude significant unavoidable noise impacts to certain residences in the Newport Crest condominium development. Noise impacts from future traffic on Bluff Road and 15th Street were evaluated in the Draft EIR. This analysis establishes that, after mitigation, noise levels at existing residences in the Newport Crest development would be considered "Clearly Compatible" or "Normally Compatible", and that the resulting exterior and interior noise levels at these residences would remain consistent with the City of Newport Beach noise standards (MMs 4.12-6 and 4.12-7). However, the analysis also confirms that long-term noise increases at some Newport Crest residences would remain above the 5 dBA significance criterion for noise increase. Therefore, the proposed Project's noise impacts as to some of the Newport Crest residences are significant and unavoidable. Although the elimination of access from West Coast Highway may reduce or preclude this significant impact if Bluff Road were eliminated entirely, the elimination of this access from West Coast Highway could still allow for a circulation system that includes access from 15<sup>th</sup> Street and the construction of North Bluff Road. As such, this modification could result in other significant noise impacts if access to the Project site was directed away from West Coast Highway to 15<sup>th</sup> Street. Specifically, the City believes that the redistribution of vehicular traffic would result in significant noise impacts to other off-site sensitive receptors including schools and other residents in the vicinity.

The City has carefully examined whether to analyze the elimination of access off of West Coast Highway and determined that this suggestion should be rejected from further consideration. For the reasons set forth above, elimination of a Bluff Road access from West Coast Highway conflicts with key proposed Project objectives regarding implementation and consistency with the City's General Plan Circulation Element and would frustrate attainment of the Project objectives. Bluff Road through the property is reflected in the City's General Plan Circulation Element Master Plan of Streets and Highways and the Orange County MPAH. The City cannot eliminate this planned circulation improvement without amending its Circulation Element, and cannot unilaterally amend the County's MPAH. Further, eliminating Bluff Road would place the City in conflict with its obligations assumed in connection with its acceptance of Measure M funds. Finally, eliminating Bluff Road access from West Coast Highway would not substantially lessen impacts to biological resources and would eliminate an alternative means of coastal access.

For these reasons, the City determined that the consideration of the elimination of a roadway connection from West Coast Highway was not warranted.

#### **Response 5**

Potential impacts to roadways and highways within the traffic study area are addressed in the Draft EIR; see Section 4.9, Transportation and Circulation. The EIR Traffic Impact Analysis includes 19 Caltrans intersections as identified in the Draft EIR.

#### **Response 6**

Potential impacts to roadways and highways within the traffic study area are addressed in the Draft EIR; see Section 4.9, Transportation and Circulation. The EIR Traffic Impact Analysis includes 19 Caltrans intersections as identified in the Draft EIR.

#### **Response 7**

The comment is noted.

#### **Response 8**

The comment is noted.

#### **Response 9**

Alternative modes of travel are most specifically addressed in Section 4.7, Recreation and Trails, and Section 4.9 of the Draft EIR. Alternative modes include pedestrian and bicycle trails and public transit. The Project would be required to comply with the ADA.

#### **Response 10**

The comment is noted. Please refer to the Mitigation Program set forth in Section 4.13, Cultural and Paleontological Resources.

#### **Response 11**

The comment is noted.

## **Response 12**

The comment is noted. Please refer to the response to Comment 1.

NATURAL RESOURCES AGENCY

Comment Letter S3  
EDMUND G. BROWN, JR., GOVERNOR



## DEPARTMENT OF CONSERVATION

*Managing California's Working Lands*

### Division of Oil, Gas, & Geothermal Resources

5816 CORPORATE AVENUE • SUITE 200 • CYPRESS, CALIFORNIA 90630-4731

PHONE 714 / 816-6847 • FAX 714 / 816-6853 • WEB SITE [conservation.ca.gov](http://conservation.ca.gov)

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DEVELOPMENT  
CITY OF NEWPORT BEACH

October 20, 2011

Mr. Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Dept.  
P.O. Box 1768  
Newport Beach, CA 92658-8915

#### DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE NEWPORT BANNING RANCH PROJECT – CITY OF NEWPORT BEACH, SCH # 2009031061

Dear Mr. Alford:

The Department of Conservation's Division of Oil, Gas, and Geothermal Resources (Division), Cypress office, has reviewed the above referenced project. Our comments are as follows.

The proposed project is located within the administrative boundaries of the West Newport oil field. There are numerous active, idle, plugged and abandoned wells within or in proximity to the project boundaries. The wells are identified on Division map 136 and in Division records. The Division recommends that all wells within or in close proximity to project boundaries be accurately plotted on future project maps.

1

The Division is mandated by Section 3106 of the Public Resources Code (PRC) to supervise the drilling, operation, maintenance, and plugging and abandonment of wells for the purpose of preventing: (1) damage to life, health, property, and natural resources; (2) damage to underground and surface waters suitable for irrigation or domestic use; (3) loss of oil, gas, or reservoir energy; and (4) damage to oil and gas deposits by infiltrating water and other causes. Furthermore, the PRC vests in the State Oil and Gas Supervisor (Supervisor) the authority to regulate the manner of drilling, operation, maintenance, and abandonment of oil and gas wells so as to conserve, protect, and prevent waste of these resources, while at the same time encouraging operators to apply viable methods for the purpose of increasing the ultimate recovery of oil and gas.

2

The scope and content of information that is germane to the Division's responsibility are contained in Section 3000 et seq. of the Public Resources Code (PRC), and administrative regulations under Title 14, Division 2, Chapter 4 of the California Code of Regulations.

3

*The Department of Conservation's mission is to balance today's needs with tomorrow's challenges and foster intelligent, sustainable, and efficient use of California's energy, land, and mineral resources.*



Mr. Patrick J. Alford,  
October 20, 2011  
Page 2 of 2

If any structure is to be located over or in the proximity of a previously plugged and abandoned well, the well may need to be plugged to current Division specifications. Section 3208.1 of the Public Resources Code (PRC) authorizes the State Oil and Gas Supervisor (Supervisor) to order the reabandonment of any previously plugged and abandoned well when construction of any structure over or in the proximity of the well could result in a hazard.	3 cont.
An operator must have a bond on file with the Division before certain well operations are allowed to begin. The purpose of the bond is to secure the state against all losses, charges, and expenses incurred by it to obtain such compliance by the principal named in the bond. The operator must also designate an agent, residing in the state, to receive and accept service of all orders, notices, and processes of the Supervisor or any court of law.	4
Written approval from the Supervisor is required prior to changing the physical condition of any well. The operator's notice of intent (notice) to perform any well operation is reviewed on engineering and geological basis. For new wells and the altering of existing wells, approval of the proposal depends primarily on the following: protecting all subsurface hydrocarbons and fresh waters; protection of the environment; using adequate blowout prevention equipment; and utilizing approved drilling and cementing techniques.	5
The Division must be notified to witness or inspect all operations specified in the approval of any notice. This includes tests and inspections of blowout-prevention equipment, reservoir and freshwater protection measures, and well-plugging operations.	6
The Division recommends that adequate safety measures be taken by the project manager to prevent people from gaining unauthorized access to oilfield equipment. Safety shut-down devices on wells and other oilfield equipment must be considered when appropriate.	7
If any plugged and abandoned or unrecorded wells are damaged or uncovered during excavation or grading, remedial plugging operations may be required. If such damage or discovery occurs, the Division's Cypress district office must be contacted to obtain information on the requirements for and approval to perform remedial operations.	8

Sincerely,



Syndi Pompa  
Associate Oil & Gas Engineer - Facilities

**Letter S3**      **Department of Conservation, Division of Oil, Gas, & Geothermal Resources**  
Syndi Pompa, Associate Oil and Gas Engineer – Facilities  
October 20, 2011

**Response 1**

The Project Applicant has received a map from the oilfield operator, West Newport Oil Company, showing the location of all oilfield facilities, including but not limited to oil wells, pipelines, abandoned wells, pumping equipment, storage facilities, and other associated production facilities. That information was used by to prepare Exhibit 3-4 in Section 3.0, Project Description, of the Draft EIR. The City understands that this information was also used by the Applicant in developing the land use plans for the proposed Project and the siting of proposed land uses.

**Response 2**

The oilfield operator would continue to coordinate any well work activity with DOGGR, in accordance with Section 3106 of the Public Resources Code (PRC) regulations.

**Response 3**

No structures in the Project site would be located over or within 10 feet of a previously plugged and abandoned well. Wells located within the proposed development area associated with the proposed Project have been or would be plugged and abandoned in accordance with current Division specifications as part of the Project.

**Response 4**

The oilfield operator would have appropriate bonding in place when performing well operations and shall have a designated agent, in accordance with PRC regulations.

**Response 5**

Written approval from the State Oil and Gas Supervisor (Supervisor) would be obtained prior to changing the physical condition of any well. It should be noted that the responsibility for obtaining the written approval discussed in this comment would be undertaken by the oilfield operator, not the Applicant.

**Response 6**

The comment is noted.

**Response 7**

The property currently operates in compliance with all DOGGR requirements for site security. Site security would be maintained by the oilfield operator.

**Response 8**

The comment is noted.





Matthew Rodriguez  
Secretary for  
Environmental Protection



## Department of Toxic Substances Control

Deborah O. Raphael, Director  
5796 Corporate Avenue  
Cypress, California 90630



Edmund G. Brown Jr.  
Governor

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DEVELOPMENT  
CITY OF NEWPORT BEACH

November 7, 2011

Mr. Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915

### NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE NEWPORT BANNING RANCH PROJECT, (SCH#2009031061), ORANGE COUNTY

Dear Mr. Alford:

The Department of Toxic Substances Control (DTSC) has received your submitted draft Subsequent Environmental Impact Report (SEIR) for the above-mentioned project. The following project description is stated in your document: "The Newport Banning Ranch Project site (Project site) encompasses 401 acres. The Project site is generally bound on the north by the County of Orange Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development in the City of Newport Beach; on the east by residential, light industrial, institutional, and office development in the Cities of Costa Mesa and Newport Beach; and on the west by the U.S. Army Corps of Engineers (USACE) restored salt marsh basin and the Santa Ana River. The proposed Project would allow for the development of the site with residential, commercial, resort inn, and park and recreational uses, and would provide open space uses that would permit the designation of oil use retention and consolidation on a portion of the open space area of the Project site. The Project site has a Newport Beach General Plan land use designation of OS (RV), Open Space/Residential Village. The entire site is within Coastal Zone. "

Based on the review of the submitted document DTSC has the following comments:

- 1) DTSC provided comments on the project re-issued Notice of Preparation (NOP) on April 6, 2009; some of those comments have been addressed in the submitted draft EIR. Please ensure that all those comments will be addressed in the final Environmental Impact Report.

1

Mr. Patrick J. Alford  
November 7, 2011  
Page 2

2) DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see [www.dtsc.ca.gov/SiteCleanup/Brownfields](http://www.dtsc.ca.gov/SiteCleanup/Brownfields), or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.

2

If you have any questions regarding this letter, please contact Rafiq Ahmed, Project Manager, at [rahmed@dtsc.ca.gov](mailto:rahmed@dtsc.ca.gov), or by phone at (714) 484-5491

Sincerely,



Greg Holmes  
Unit Chief  
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research  
State Clearinghouse  
P.O. Box 3044  
Sacramento, California 95812-3044  
[state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

CEQA Tracking Center  
Department of Toxic Substances Control  
Office of Environmental Planning and Analysis  
P.O. Box 806  
Sacramento, California 95812  
Attn: Nancy Ritter  
[nritter@dtsc.ca.gov](mailto:nritter@dtsc.ca.gov)

CEQA # 3344

**Letter S4**      **Department of Toxic Substances Control**  
Greg Homes, Unit Chief  
November 7, 2011

### **Response 1**

The Department of Toxic Substances Control (DTSC) provided comments to the City on the Notice of Preparation (NOP) for the Newport Banning Ranch Draft EIR. The following summarizes the comments provided by DTSC and responses follow these comments. The DTSC's NOP letter is provided in Appendix A to the Draft EIR.

#### ***NOP Comments***

- The EIR should identify the current or historic uses at the project site that may have resulted in the release of hazardous wastes/substances, and any known or potentially contaminated sites within the proposed Project area. For all identified sites, the EIR should evaluate potential impacts.
- The EIR should identify the mechanism to initiate any required investigation and/or remediation for any contaminated site and the government agency with regulatory oversight.
- All environmental investigations, sampling, and /or remediation for the site should be conducted under a workplan approved and overseen by a regulatory agency with jurisdiction over hazardous substance cleanup.
- Proper investigation, sampling and remedial actions overseen by regulatory agencies should be conducted prior to site development.
- If buildings, structures, or asphalt/concrete-paved surface areas would be demolished, an investigation should be conducted to determine the presence of lead-based paint asbestos-containing materials, mercury, or other hazardous chemicals.
- Sampling may be required for soil excavation or fill.
- Human health and sensitive receptors should be protected during demolition and construction.
- If hazardous wastes are or will be generated by the Project, the waste must be managed in accordance with the California Hazardous Waste Control Law and the Hazardous Waste Control Regulations.
- If soil and/or groundwater contamination is suspected during construction/demolition, the construction and/or demolition should cease until health and safety procedures are implemented.
- On-site soils and groundwater may need to be investigated and remediated if the site contains pesticides, agricultural chemicals, organic waste, or other related residue.

#### ***Response to the NOP Comments***

The Draft EIR addresses the issues raised by the DTSC in its comment. The Project site is an active oilfield. Site remediation would be required to allow for site development. Please

refer to Section 4.5, Hazards and Hazardous Materials, of the Draft EIR. As addressed in Section 4.5, the oil operations have had environmental regulatory oversight by both the California Regional Water Quality Control Board – Santa Ana Region (Santa Ana RWQCB) and the Orange County Health Care Agency (OCHCA). Since about 1992, both agencies have been involved in overseeing certain aspects of cleanup activities and Project site operations. A draft Remedial Action Plan (RAP) has been prepared for the proposed Project and is included in the Draft EIR as Appendix D.

Comment Letter S5

STATE OF CALIFORNIA

Edmund G. Brown, Jr., Governor

**NATIVE AMERICAN HERITAGE COMMISSION**

915 CAPITOL MALL, ROOM 364  
SACRAMENTO, CA 95814  
(916) 653-6251  
Fax (916) 657-5390  
Web Site [www.nahc.ca.gov](http://www.nahc.ca.gov)  
ds\_nahc@pacbell.net



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DEVELOPMENT  
CITY OF NEWPORT BEACH

October 3, 2011

Mr. Patrick J. Alford

**CITY OF NEWPORT BEACH**

3300 Newport Boulevard; P.O. Box 1768  
Newport Beach, CA 92663

Re: SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the "Newport Banning Ranch Project," located in the City of Newport Beach Orange County, California

Dear Mr. Alford:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3<sup>rd</sup> 604). The NAHC wishes to comment on the proposed project. In the decision, the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance.' In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were identified** within one-half mile of the project. This area is known to the NAHC as very culturally sensitive. Also, the absence of archaeological resources does not preclude their existence.

The NAHC "Sacred Sites," as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r).

1



Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq.*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

1 cont.

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254( r) and may also be protected under Section 304 of the NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing


2

relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

1 cont.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton  
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

**Native American Contacts**  
Orange County  
October 3, 2011

Ti'At Society/Inter-Tribal Council of Pimu  
Cindi M. Alvitre, Chairwoman-Manisar  
3098 Mace Avenue, Aapt. D Gabrielino  
Costa Mesa, CA 92626  
calvitre@yahoo.com  
(714) 504-2468 Cell

Gabrielino Tongva Nation  
Sam Dunlap, Chairperson  
P.O. Box 86908  
Los Angeles, CA 90086  
samdunlap@earthlink.net  
Gabrielino Tongva  
(909) 262-9351 - cell

Juaneno Band of Mission Indians Acjachemen Nation  
David Belardes, Chairperson  
32161 Avenida Los Amigos Juaneno  
San Juan Capistrano CA 92675  
chiefdavidbelardes@yahoo.  
(949) 493-4933 - home  
(949) 293-8522

Juaneno Band of Mission Indians Acjachemen Nation  
Anthony Rivera, Chairman  
31411-A La Matanza Street Juaneno  
San Juan Capistrano CA 92675-2674  
arivera@juaneno.com  
(949) 488-3484  
(949) 488-3294 - FAX  
(530) 354-5876 - cell

Tongva Ancestral Territorial Tribal Nation  
John Tommy Rosas, Tribal Admin.  
Private Address Gabrielino Tongva  
tattnlaw@gmail.com  
310-570-6567

Gabrielino Tongva Indians of California Tribal Council  
Robert F. Dorame, Tribal Chair/Cultural Resources  
P.O. Box 490  
Bellflower, CA 90707  
gtongva@verizon.net  
562-761-6417 - voice  
562-761-6417- fax

Gabrielino/Tongva San Gabriel Band of Mission  
Anthony Morales, Chairperson  
PO Box 693 Gabrielino Tongva  
San Gabriel, CA 91778  
GTTribalcouncil@aol.com  
(626) 286-1632  
(626) 286-1758 - Home  
(626) 286-1262 -FAX

Juaneno Band of Mission Indians  
Alfred Cruz, Culural Resources Coordinator  
P.O. Box 25628 Juaneno  
Santa Ana, CA 92799  
alfredgcruz@sbcglobal.net  
714-998-0721  
714-998-0721 - FAX  
714-321-1944 - cell

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (EIR); for the Newport Banning Ranch Project located in the Newport Beach area of Orange County, California.



**Native American Contacts**  
Orange County  
October 3, 2011

Juaneno Band of Mission Indians  
Adolph 'Bud' Sepulveda, Vice Chairperson  
P.O. Box 25828                      Juaneno  
Santa Ana , CA 92799  
bssepul@yahoo.net  
714-838-3270  
714-914-1812 - CELL  
bsepul@yahoo.net

Juaneño Band of Mission Indians  
Sonia Johnston, Tribal Chairperson  
P.O. Box 25628                      Juaneno  
Santa Ana , CA 92799  
sonia.johnston@sbcglobal.  
(714) 323-8312

Juaneno Band of Mission Indians  
Anita Espinoza  
1740 Concerto Drive                      Juaneno  
Anaheim , CA 92807  
neta777@sbcglobal.net  
(714) 779-8832

United Coalition to Protect Panhe (UCPP)  
Rebecca Robles  
119 Avenida San Fernando                      Juaneno  
San Clemente CA 92672  
rebroles1@gmail.com  
(949) 573-3138

Gabrielino-Tongva Tribe  
Bernie Acuna  
1875 Century Pk East #1500 Gabrielino  
Los Angeles , CA 90067  
(619) 294-6660-work  
(310) 428-5690 - cell  
(310) 587-0170 - FAX  
bacuna1@gabrieinotribe.org

Juaneno Band of Mission Indians Acjachemen Nation  
Joyce Perry; Representing Tribal Chairperson  
4955 Paseo Segovia                      Juaneno  
Irvine , CA 92612  
949-293-8522

Gabrielino-Tongva Tribe  
Linda Candelaria, Chairwoman  
1875 Century Park East, Suite 1500  
Los Angeles , CA 90067                      Gabrielino  
lcandelaria1@gabrielinoTribe.org  
626-676-1184- cell  
(310) 587-0170 - FAX  
760-904-6533-home

Gabrieleno Band of Mission Indians  
Andrew Salas, Chairperson  
P.O. Box 393                      Gabirelino Tongva  
Covina , CA 91723  
(626) 926-4131  
gabrielenoindians@yahoo.  
com

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (EIR); for the Newport Banning Ranch Project located in the Newport Beach area of Orange County, California.

**Letter S5      Native American Heritage Commission**  
Dave Singleton, Program Analyst  
October 3, 2011

**Response 1**

The comment is noted. Please refer to Section 4.13, Cultural and Paleontological Resources. Pages 4.13-6 through 4.13-10 addresses the methodology used in the preparation of the prehistoric archaeological, historical, and paleontological evaluations which included consultation with Native American tribal representatives.



Edmund G. Brown Jr.  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

Comment Letter S6a

Memorandum

Date: October 26, 2011  
To: All Reviewing Agencies  
From: Scott Morgan, Director  
Re: SCH # 2009031061  
Newport Banning Ranch



The State Clearinghouse forwarded the above-mentioned project to your agency for review on September 9, 2011 with incorrect review dates. Please make note of the following information for your files:

Review period ends: November 8, 2011

We apologize for any inconvenience this may have caused. All other project information remains the same.

cc: Patrick J. Alford  
City of Newport Beach  
3300 Newport Blvd.  
P.O. Box 1768  
Newport Beach, CA 92658-8915

1400 TENTH STREET P.O. BOX 3044 SACRAMENTO, CALIFORNIA 95812-3044  
TEL (916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

**Letter S6a     State of California Governor's Office of Planning and Research**  
Scott Morgan, Director  
October 26, 2011

**Response 1**

This comment letter acknowledges that the City of Newport Beach had requested a 60-day public review period.



Edmund G. Brown Jr.  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Ken Alex  
Director

November 9, 2011

Patrick J. Alford  
City of Newport Beach  
3300 Newport Boulevard  
PO Box 1768  
Newport Beach, CA 92658-8915

Subject: Newport Banning Ranch  
SCH#: 2009031061

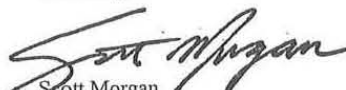
Dear Patrick J. Alford:

The enclosed comment (s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on November 8, 2011. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2009031061) when contacting this office.

Sincerely,

  
Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

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DEVELOPMENT  
CITY OF NEWPORT BEACH



Matthew Rodriguez  
Secretary for  
Environmental Protection

## California Regional Water Quality Control Board Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288  
www.waterboards.ca.gov/santaana



Edmund G. Brown Jr.  
Governor

November 8, 2011

Patrick Alford  
City of Newport Beach Planning Department  
P.O. Box 1768  
Newport Beach, CA 92658-8915



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11/8/2011  
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### DRAFT ENVIRONMENTAL IMPACT REPORT, NEWPORT BANNING RANCH, CITY OF NEWPORT BEACH, SCH# 2009031061

Dear Mr. Alford:

Staff of the Regional Water Quality Control Board, Santa Ana Region (Regional Board) have reviewed the Draft Environmental Impact Report (DEIR) for the proposed Newport Banning Ranch residential and open space project (Project). The site is located mostly on unincorporated Orange County area between West Coast Highway (southwestern City of Newport Beach; "City") and 19<sup>th</sup> Street (Costa Mesa), and it would be annexed to the City.

The Newport Banning Ranch oilfield encompasses approximately 401 acres of bluff and lowland topography (former marine embayment) east of Semeniuk Slough and associated marine wetlands. The site is dissected by two generally east-west parallel drainages (North and South Arroyos) that are tributary to Semeniuk Slough. The Project would abandon the oilfield's wells and remediate portions of it where necessary, reducing the oilfield size to 16.5 active acres until this too is eventually abandoned, remediated, and restored as open space.

To access the site, the Project will amend earlier highway plans to construct South Bluff Road and North Bluff Road as original 4-lane and 2-lane parkways through open space between West Coast Highway and 19<sup>th</sup> Street. The existing termini of 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Streets will be extended westward into the property.

We believe that the final EIR should incorporate the following comments in order for the Project to best protect water quality standards (water quality objectives and beneficial uses) contained in the Water Quality Control Plan for the Santa Ana River Basin, 1995, as amended (Basin Plan):

1. The Project will construct mixed use and 1,375 residential units on 86.1 acres, a resort inn on 11.3 acres, and a public park on 26.8 of 51.4 acres that are designated for recreation (Executive Summary Table 1-1, p.1-2). Depending on a timeframe for acquisition of open space between the property owner and the City, 252.3 acres of open space would be preserved largely as natural habitat (ES pg.1-2, 1-3). If an acquisition agreement is not met and additional construction is proposed within that 252.3 acres, will another DEIR be recirculated?

California Environmental Protection Agency

Recycled Paper



Mr. Patrick Alford

- 2 -

November 8, 2011

2. The Watershed Assessment Report (Appendix C), among the hydrology studies, states that the site's Northern Arroyo is a stable natural channel not expected to erode. The Southern Arroyo and tributaries, however, will receive stabilization measures to reduce hydromodification and sediment transport into Semeniuk Slough, including a diffuser basin at the downstream end of the Southern Arroyo. Given that Executive Summary p.1-7 refers to improving "existing arroyo drainage courses," does that specifically pertain to work in the Northern Arroyo as well as in the Southern? Will there be any reconfiguration of these channels or will re-vegetation alone constitute "fill to waters of the U.S. and state," so that an appropriate listing of impacts may be made in the application for a Clean Water Act Section 401 Water Quality Standards Certification (Certification; ES p.1-5)?

Further, if natural treatment systems are to detain and clarify runoff from onsite/offsite sources, prior to discharge into Semeniuk Slough, will all of these natural treatment systems therefore discharge into the Northern and Southern Arroyos?

3. Executive Summary p.1-35, Table 1-2, Summary of Significant Impacts and Mitigation Program, states that the Project will disturb (or eliminate?) 2.45 acres of marsh, 12.93 acres of riparian and disturbed riparian area, and 0.14 acre of "grassland depression features." The latter should be clarified as being seasonal ponds or biologically structured vernal pools, as we surmise from the mitigation discussion, and the referenced fairy shrimp should be speciated and discussed as being under federal or state protection. Regional Board staff request that any vernal pool be avoided by the Project to the greatest extent possible.

As mitigation, Project Design Features 4.6-1 and -2 (pg. 1-35,-36) will designate a minimum of 220 gross acres as wetland restoration/water quality areas, habitat conservation (coastal sage scrub and grasslands), and restoration mitigation areas, with a Habitat Restoration Plan, endowed management, and conservation easements /deed restrictions. Would such designation conflict with the uncertainty regarding the acquisition agreement, mentioned in paragraph 1. above?

We understand that of the referenced 220 acres, 12.25 acres will be mitigated onsite for the disturbed marshland and will include a "marsh meadow," while riparian area will likely be mitigated as discussed under "jurisdictional areas (p.1-36-38)." We understand there are expected to be 0.32 acre of permanent and 3.93 acres of temporary impacts to waters of the U.S., jurisdictional to the U.S. Army Corps of Engineers (requiring a Certification). As mitigation, the Project would restore 15.77 acres related to water bodies. The final EIR should clarify whether this 15.77 acres (part of Mitigation Measure MM 4.6-5) is:

- 1) included within the 220 gross acres proposed above, and
- 2) includes the replacement of riparian forest for Least Bell's vireo habitat noted in Mitigation Measure MM 4.6-11.

---

The "grassland depression features" would be mitigated by 3.58 acres of vernal pool; please clarify whether the intention is to replace an excavated vernal pool with reconstructed vernal pools elsewhere on the property; they are usually problematic to reproduce with the same biological integrity as the original pools.

*California Environmental Protection Agency*

*Recycled Paper*

Mr. Patrick Alford

- 3 -

November 8, 2011

If you have any questions, please contact me at (951) 782-3259, or [grobertson@waterboards.ca.gov](mailto:grobertson@waterboards.ca.gov), or Mark Adelson, Chief of our Regional Planning Programs Section, at (951) 782-3234, or [madelson@waterboards.ca.gov](mailto:madelson@waterboards.ca.gov).

Sincerely,




Glenn Robertson  
Engineering Geologist  
Regional Planning Programs Section

cc: State Clearinghouse  
U.S. Army Corps of Engineers, Los Angeles - Stephanie Hall  
U.S. Fish and Wildlife Service, Carlsbad - Jonathan D. Snyder/ Ken Corey  
California Department of Fish and Game, Los Alamitos - Mary Larson  
California Coastal Commission, San Francisco - Jack Gregg

X:Groberts on Magnolia/Data/CEQA/DEIR- City of Newport Beach - Newport Banning Ranch.doc

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California  Environmental Protection Agency

Recycled Paper



**Letter S6b     State of California Governor's Office of Planning and Research**  
Scott Morgan, Director  
November 9, 2011

**Response 1**

The City of Newport Beach received two letters from the State Clearinghouse. This second letter states that they received one comment letter after the close of the review period and encourages its incorporation into the Final EIR. The letter that the State Clearinghouse forwarded to the City is from the California Regional Water Quality Control Board, Santa Ana Region; this comment letter was also sent directly to the City. The responses to the comment letter are addressed in the responses to Letter S7.

11/08/2011 17:19 9517816288

RWQCB

PAGE 02/04

Comment Letter S7



Matthew Rodriguez  
Secretary for  
Environmental Protection

## California Regional Water Quality Control Board Santa Ana Region

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288  
www.waterboards.ca.gov/santaana



Edmund G. Brown Jr.  
Governor

November 8, 2011

Patrick Alford  
City of Newport Beach Planning Department  
P.O. Box 1768  
Newport Beach, CA 92658-8915

### DRAFT ENVIRONMENTAL IMPACT REPORT, NEWPORT BANNING RANCH, CITY OF NEWPORT BEACH, SCH# 2009031061

Dear Mr. Alford:

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The Newport Banning Ranch oilfield encompasses approximately 401 acres of bluff and lowland topography (former marine embayment) east of Semeniuk Slough and associated marine wetlands. The site is dissected by two generally east-west parallel drainages (North and South Arroyos) that are tributary to Semeniuk Slough. The Project would abandon the oilfield's wells and remediate portions of it where necessary, reducing the oilfield size to 16.5 active acres until this too is eventually abandoned, remediated, and restored as open space.

To access the site, the Project will amend earlier highway plans to construct South Bluff Road and North Bluff Road as original 4-lane and 2-lane parkways through open space between West Coast Highway and 19<sup>th</sup> Street. The existing termini of 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Streets will be extended westward into the property.

We believe that the final EIR should incorporate the following comments in order for the Project to best protect water quality standards (water quality objectives and beneficial uses) contained in the Water Quality Control Plan for the Santa Ana River Basin, 1995, as amended (Basin Plan):

1. The Project will construct mixed use and 1,375 residential units on 86.1 acres, a resort inn on 11.3 acres, and a public park on 26.8 of 51.4 acres that are designated for recreation (Executive Summary Table 1-1, p.1-2). Depending on a timeframe for acquisition of open space between the property owner and the City, 252.3 acres of open space would be preserved largely as natural habitat (ES pg.1-2, 1-3). If an acquisition agreement is not met and additional construction is proposed within that 252.3 acres, will another DEIR be recirculated?

1

California Environmental Protection Agency

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RWQCB

PAGE 03/04

Mr. Patrick Alford

- 2 -

November 8, 2011

2. The Watershed Assessment Report (Appendix C), among the hydrology studies, states that the site's Northern Arroyo is a stable natural channel not expected to erode. The Southern Arroyo and tributaries, however, will receive stabilization measures to reduce hydromodification and sediment transport into Semeniuk Slough, including a diffuser basin at the downstream end of the Southern Arroyo. Given that Executive Summary p.1-7 refers to improving "existing arroyo drainage courses," does that specifically pertain to work in the Northern Arroyo as well as in the Southern? Will there be any reconfiguration of these channels or will re-vegetation alone constitute "fill to waters of the U.S. and state," so that an appropriate listing of impacts may be made in the application for a Clean Water Act Section 401 Water Quality Standards Certification (Certification; ES p.1-5)?

2

Further, if natural treatment systems are to detain and clarify runoff from onsite/offsite sources, prior to discharge into Semeniuk Slough, will all of these natural treatment systems therefore discharge into the Northern and Southern Arroyos?

3. Executive Summary p.1-35, Table 1-2, Summary of Significant Impacts and Mitigation Program, states that the Project will disturb (or eliminate?) 2.45 acres of marsh, 12.93 acres of riparian and disturbed riparian area, and 0.14 acre of "grassland depression features." The latter should be clarified as being seasonal ponds or biologically structured vernal pools, as we surmise from the mitigation discussion, and the referenced fairy shrimp should be speciated and discussed as being under federal or state protection. Regional Board staff request that any vernal pool be avoided by the Project to the greatest extent possible.

3

As mitigation, Project Design Features 4.6-1 and -2 (pg. 1-35,-36) will designate a minimum of 220 gross acres as wetland restoration/water quality areas, habitat conservation (coastal sage scrub and grasslands), and restoration mitigation areas, with a Habitat Restoration Plan, endowed management, and conservation easements /deed restrictions. Would such designation conflict with the uncertainty regarding the acquisition agreement, mentioned in paragraph 1. above?

4

We understand that of the referenced 220 acres, 12.25 acres will be mitigated onsite for the disturbed marshland and will include a "marsh meadow," while riparian area will likely be mitigated as discussed under "jurisdictional areas (p.1-36-38)." We understand there are expected to be 0.32 acre of permanent and 3.93 acres of temporary impacts to waters of the U.S., jurisdictional to the U.S. Army Corps of Engineers (requiring a Certification). As mitigation, the Project would restore 15.77 acres related to water bodies. The final EIR should clarify whether this 15.77 acres (part of Mitigation Measure MM 4.6-5) is:  
1) included within the 220 gross acres proposed above, and  
2) includes the replacement of riparian forest for Least Bell's vireo habitat noted in Mitigation Measure MM 4.6-11.

5

The "grassland depression features" would be mitigated by 3.58 acres of vernal pool; please clarify whether the intention is to replace an excavated vernal pool with reconstructed vernal pools elsewhere on the property; they are usually problematic to reproduce with the same biological integrity as the original pools.

6

California Environmental Protection Agency

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RWQCB

PAGE 04/04

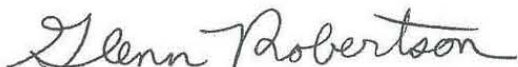
Mr. Patrick Alford

- 3 -

November 8, 2011

If you have any questions, please contact me at (951) 782-3259, or [grobertson@waterboards.ca.gov](mailto:grobertson@waterboards.ca.gov), or Mark Adelson, Chief of our Regional Planning Programs Section, at (951) 782-3234, or [madelson@waterboards.ca.gov](mailto:madelson@waterboards.ca.gov).


Sincerely,



Glenn Robertson  
Engineering Geologist  
Regional Planning Programs Section

cc: State Clearinghouse  
U.S. Army Corps of Engineers, Los Angeles - Stephanie Hall  
U.S. Fish and Wildlife Service, Carlsbad - Jonathan Snyder  
California Department of Fish and Game, Los Alamitos - Mary Larson  
California Coastal Commission, San Francisco - Jack Gregg

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California  Environmental Protection Agency

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**Letter S7**      **California Regional Water Quality Control Board, Santa Ana Region**  
Glenn Robertson, Engineering Geologist  
November 8, 2011

### **Response 1**

The City is unclear regarding the RWQCB's comment. If the RWQCB is referring to development on the property under the General Plan Open Space land use designation, please refer to Alternative B: General Plan Open Space Designation in Section 7.0, Alternatives to the Proposed Project, of the Draft EIR which evaluates the potential environmental impacts associated with this alternative. If the RWQCB is asking if additional development could occur in the future in the proposed Open Space Preserve, the answer is not as a part of the proposed Project. The Applicant, as with all property owners, can request land use changes. It would be speculative to evaluate future land use changes to the property which are not contemplated.

### **Response 2**

As addressed in Section 4.4, Hydrology and Water Quality, Tables 4.4-17 and 4.4-18 of the Draft EIR and the Hydrology and Water Quality Technical Report (Appendix C of the Draft EIR), the HEC-RAS analysis found the Southern Arroyo to be stable while the upstream tributaries were less stable causing excess sediment deposition into the Southern Arroyo. The upstream tributaries would be stabilized through specific soil stabilization measures. No stabilization measures are necessary for the Southern Arroyo even when taking into consideration decreased sediment deposits from the tributaries after stabilization. There are no plans to reconfigure the Southern Arroyo channel. The location of the diffuser basin at the downstream end is located within the vicinity of the existing asphalt paved roads at the terminus of the Southern Arroyo.

For the Northern Arroyo, field investigations indicated some minor channel bank instability. Revegetation of the channel with native habitat is proposed to stabilize the channel banks; reconfiguration of the Northern Arroyo channel is not proposed. Temporary impacts associated with the Northern Arroyo re-vegetation stabilization efforts would be included in the 401 Certification application.

On-site runoff from development areas would be routed through the proposed bioretention facilities prior to discharge into downstream receiving waters that largely bypass the Northern and Southern Arroyos in a means to preserve existing drainage patterns and eliminate the potential for hydromodification impacts. In certain instances, treated low flow from the bioretention facilities may be discharged into the Southern Arroyo in controlled volumes and rates to provide additional nourishment to existing habitats or proposed restoration areas. Off-site flows upstream of the Southern Arroyo would be directed through a water quality basin and then treated flows would be discharged in a controlled manner back into the Southern Arroyo in a similar location that off-site flows currently drain into the arroyo.

### **Response 3**

Please refer to Topical Response: Vernal Pools. Not all of the "grassland depression features" are considered seasonal ponds or vernal pools. As part of the biological resource analysis conducted for the site, 54 features on the Project site were examined to determine if they meet the criteria for consideration as wetlands or vernal pools. Fairy shrimp detected were properly speciated. Several of the depression features were identified with the federally listed San Diego fairy shrimp. However, all of these features were created by oilfield activities; none of these depression features were determined to be naturally occurring vernal pools. Some of these

features would be preserved and restored as a part of the proposed Project (e.g., Pools 1 and 2). Others are oilfield sumps that require soil remediation and would be mitigated through the creation of appropriate seasonal pool habitat within a 3.58 acre vernal pool conservation area. In addition, two grassland pools created by excavation and berming that support the San Diego fairy shrimp are proposed to be impacted and mitigated within the 3.58-acre vernal pool conservation area. With mitigation there would be a net increase in pool area that supports the San Diego fairy shrimp.

#### **Response 4**

Please refer to Topical Response: Vernal Pools. Please also refer to the response to Comment 1.

#### **Response 5**

The 15.77 acres of riparian habitat restoration would be included within the 220 acres of the Project proposes as described in PDF 4.6-1. In addition, the 15.77 acres of riparian habitat restoration includes mitigation for impacts on the least Bell's vireo.

#### **Response 6**

As described in more detail in Mitigation Measure 4.6-3, the proposed Project is designed to protect the two areas previously described as vernal pools that are occupied by San Diego fairy shrimp. There is no plan to "replace an excavated vernal pool with reconstructed vernal pools elsewhere". Once the remediation and pipeline removal within the existing pools are completed, the vernal pool areas would be restored and protected. In addition, the pools watershed would be enlarged and protected. Expansion of the watershed would increase hydrological input by creating hydrological conditions for additional pools, which would promote more and higher quality habitat created as mitigation for Features E, G, I, and J, which support the San Diego fairy shrimp. Restoration of the pool areas, by removing mule fat and non-native species, would restore the pools to characteristic vernal pool habitat, as vernal pools do not typically support woody vegetation such as mule fat. The restoration program would also provide increased wildlife habitat function for migratory birds that use the pools as a migration stopover, and the increased watershed area would be planted with native alkali meadow or native upland grasses favorable for raptor foraging.

## **COUNTY AGENCIES**







Comment Letter C1

Director  
300 N. Flower Street  
Santa Ana, CA  
P.O. Box 4048  
Santa Ana, CA 92702-4048  
Telephone: (714) 834-2300  
Fax: (714) 834-5188

NCL 11-039

November 8, 2011

Patrick Alford  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663

SUBJECT: Draft Environmental Impact Report for the Newport Banning Ranch Project

Dear Mr. Alford:

The County of Orange has reviewed the Draft Environmental Impact Report for the Newport Banning Ranch Project Draft located in the City of Newport Beach and offers the following comments:

Environmental Health:

Thank you for the opportunity to review the above-referenced project document. The following comment is being submitted, and is limited to the issues relevant to the interests and mandated responsibilities of the Hazardous Materials Management Section of the Health Care Agency, Environmental Health Division.

In Section 4.5.2 of the above-referenced document it is stated that "both the California Regional Water Quality Control Board – Santa Ana Region (SA RWQCB) and the Orange County Health Care Agency (OCHCA) have had environmental regulatory oversight of this Project, and currently the SA RWQCB is the lead regulatory agency and has approved a Remedial Action Plan." This information is correct and the SA RWQCB remains the lead regulatory agency and is overseeing remediation efforts.

Since there are no hazardous wastes or levels of contaminants, and since the groundwater levels in the lowlands are shallow and of prime importance to the State, it is expected that the SA RWQCB will continue to be the lead agency until the Project Site receives closure.

Should you have questions regarding these comments please contact Christine Lane at (714) 433-6243.

1

Patrick Alford, City of Newport Beach  
November 8, 2011  
Page 2

<u>Environmental Resources:</u>	
In response to your request for input on the subject project, Environmental Resources has reviewed the document, and offers the following comments:	
1. Section 4.4 has many references to the "third term" NPDES stormwater permits, the 2003 DAMP, and treatment control BMPs. Under the current Fourth Term Permits, the recently approved Model WQMP and Technical Guidance Document dated August 17, 2011 represent the current standards for managing water quality impacts for new development and significant redevelopment projects. These documents require a structured assessment of tiered feasibility for infiltration, evapotranspiration, and harvest and use "LID" BMPs, prior to the consideration of biotreatment options. Treatment control BMPs are limited significantly in their application compared to the "third term" NPDES stormwater permit. Section 4.4 should be updated to be consistent with these new requirements. Particularly, the proposed water quality detention basins will need to be validated based on their ability to retain runoff as a priority over treating runoff.	2
EIR Appendix C does appear to have been updated already along these lines.	
2. The Fourth Term Permits and updated Model WQMP require preparation of a preliminary or conceptual WQMP at the earliest phase of the project. For a project of this size, location and density, it would seem appropriate for the decision-makers to review as an EIR appendix a preliminary or conceptual WQMP prior to final EIR certification, to allow a more thorough evaluation of the proposed water quality management approach. Within the EIR at present, Appendix C (and Appendix E thereto) begin to approach the requirements for a formal separate document.	3
3. On Pages (1-7) Executive Summary and (3-9) Project Description (3-9) there is reference to "existing natural treatment systems". It should be clarified whether water quality treatment systems currently exist or are proposed as new project water quality features. To the extent they do exist, more information should be provided.	4
4. On Page 3-36 (Project Description) there is reference to disposing of contaminated soil that cannot be properly remediated for re-use on site. However, there is no discussion of where this disposal might occur. This issue should be addressed.	5
5. On Page 4.4-16 (Hydrology and Water Quality), it is noted that the Newport Slough was recommended to be recognized by EPA as an officially impaired water body. Since that text was written, it has in fact been so recognized. The closest other officially listed impaired water body ["303(d) list"] to the project would probably now be the Santa Ana River, Reach 2, above 17 <sup>th</sup> Street, which EPA itself recently added.	6

Patrick Alford, City of Newport Beach  
November 8, 2011  
Page 3

See <http://www.epa.gov/region9/mediacenter/impaired-waters>

If you require any additional information, please contact Grant Sharp at (714) 955-0674.

6 cont.

Sincerely,



Michael Balsamo  
Manager, OC Community Development  
OC Public Works/OC Planning  
300 North Flower Street  
Santa Ana, California 92702-4048  
[Michael.Balsamo@ocpw.ocgov.com](mailto:Michael.Balsamo@ocpw.ocgov.com)

MB/mmc

cc: Mehdi Sobhani, Flood Programs  
Chris Crompton, Environmental Resources

**Letter C1      OC Public Works**

Mike Balsamo, Manager, OC Community Development  
November 8, 2011

**Response 1**

The comment is noted.

**Response 2**

Section 4.4, Hydrology and Water Quality, has been updated and is incorporated into the Final EIR as follows:

Page 4.4-6:

**Municipal Storm Water Permitting (MS4 Permit)**

The State's Municipal Storm Water Permitting Program regulates storm water discharges from MS4s. MS4 Permits were issued in two phases. Phase I was initiated in 1990, under which the RWQCBs adopted NPDES storm water permits for medium (serving between 100,000 and 250,000 people) and large (serving more than 250,000 people) municipalities. As part of Phase II, the SWRCB adopted a General Permit for small MS4s (serving less than 100,000 people) and non-traditional small MS4s including governmental facilities such as military bases, public campuses, and prison and hospital complexes (WQ Order No. 2003-0005-DWQ).

On May 22, 2009 the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order No. R8-2009-0030, Amended by Order No. R8-2010-0062). Re-issuance of this permit would result in future changes to the OC DAMP and City of Newport Beach LIP and storm water program. This updated fourth-term MS4 Permit includes new requirements pertaining to hydromodification<sup>11</sup> and low impact development (LID) features associated with new developments and redevelopment projects. As part of the Permit requirements, the County of Orange as the Principal Permittee and the co-permittees including the City were required to develop a new Model Water Quality Management Plan (Countywide Model WQMP) which incorporates feasibility criteria for LID and hydromodification requirements. The 2011 Model WQMP and accompanying Technical Guidance Document was approved by the Santa Ana RWQCB on May 19, 2011 with an effective implementation date of 90 days following the approval (August 17, 2011).

Page 4.4-7

***Orange County Storm Water Program 2003 Drainage Area Management Plan (DAMP)***

Section 402(p) of the Clean Water Act, as amended by the Water Quality Act of 1987, requires that municipal NPDES Permits include requirements (1) to essentially prohibit non-storm water discharges into municipal storm sewers and (2) to control the discharge of pollutants from municipal storm drains to the maximum extent practicable. In response to this requirement, the Orange County Drainage Area Management Plan (DAMP) was developed in 1993, which has been updated several times in response to requirements associated with NPDES permit renewals (County of Orange et al. 2003). The City is a permittee covered by the requirements of this permit. The next major update of the OC DAMP is

<sup>11</sup> Hydromodification is generally defined as the alteration of natural flow characteristics.

expected in 2012 and would include the incorporation of the 2011 Model WQMP and accompanying Technical Guidance Document.

Pages 4.4-9 and 4.4-10:

**City of Newport Beach Local Implementation Plan (LIP) and Water Quality Management Plan (WQMP)**

The City's Local Implementation Plan (LIP) was prepared as part of a compliance program pursuant to the Third Term NPDES Permit. The LIP presents the actions, activities and programs undertaken by the City, as well as current activities and programs, to meet the requirements of the NPDES Permit and to improve urban water quality. The City updates its LIP annually and the last updated included the Fourth Term NPDES Permit, New Model WQMP and Technical Guidance Document. Although the LIP is intended to serve as the basis for City compliance during the five-year period of the LIP is subject to modifications and updates as the City determines necessary, or as directed by the Santa Ana RWQCB.

The LIP, in conjunction with the County DAMP, is the principal policy and guidance document for the City's NPDES Storm Water Program. Sections A.7.0 and A.8.0 of the LIP address new development and significant redevelopment controls for incorporating BMPs into environmental compliance requirements. The LIP also addresses construction requirements for sedimentation and erosion control, as well as on-site hazardous materials and waste management.

On May 22, 2009, the Santa Ana RWQCB re-issued the MS4 Permit for the Santa Ana Region of Orange County (Order R8-2009-0030). Re-issuance of the fourth term of this permit resulted in changes to the 2003 DAMP and City of Newport Beach LIP and storm water program. This updated Fourth Term permit includes new requirements pertaining to hydromodification and low impact development (LID) features associated with new developments and redevelopment projects. Within 12 months after the permit adoption, the County of Orange, as the Principal Permittee, must finalize a new Model WQMP that incorporates feasibility criteria for LID and hydromodification requirements. Following the Santa Ana RWQCB's approval of the Model WQMP, the City will be required to update their LIP and storm water programs and incorporate the new Model WQMP into their discretionary approval processes for new development and redevelopment projects.

The updated Fourth Term MS4 Permit, adopted by the Santa Ana RWQCB on May 22, 2009, includes new requirements pertaining to hydromodification<sup>12</sup> and LID features associated with new developments and redevelopment projects. The 2011 Model WQMP and accompanying Technical Guidance Document was developed to incorporate the LID hierarchy criteria and hydromodification requirements. The prescribed hierarchy of treatment for site design and LID features in ranking order includes infiltration, evapotranspiration, harvest/use, biotreatment, and treatment control BMPs. In addition to the LID hierarchy, hydromodification controls for the 2-year storm event have been added for all priority projects....

As required by the City's municipal ordinances on storm water quality management, a project's WQMP must be submitted to the City for approval prior to the City issuing any building or grading permits. Since the proposed Project

<sup>12</sup> Hydromodification is generally defined as the alteration of natural flow characteristics.

includes the development in multiple categories listed above (e.g., residential and commercial uses, parking), the Project is subject to the requirements of the City's WQMP. This includes meeting any all of the new requirements of the updated Fourth Term MS4 Permit and associated revised LIP. These updated requirements may will include LID features, hydromodification controls, and erosion/sediment controls.

One component of the New Development/Significant Redevelopment Section of the City's LIP is the provision to prepare a WQMP for specified categories of development aimed at reducing pollutants in post-development runoff. Specifically, a project-specific WQMP includes Santa Ana RWQCB-approved BMPs, where applicable, that address post-construction management of storm water runoff water quality. This includes operation and maintenance requirements for all structural or treatment-control BMPs required for specific categories of developments to reduce pollutants in post-development runoff to the Maximum Extent Practicable (MEP). The categories of development that require preparation of a project-specific WQMP based on the 2011 Model WQMP include:

### **Response 3**

A Preliminary Water Quality Management Plan has been prepared consistent with the 2011 Model WQMP and Appendix C of the Draft EIR. Please see Appendix A (PWQMP) to this Responses to Comments document.

### **Response 4**

Project Objective 14 has been corrected and is incorporated into the Final EIR as follows:

Pages 1-7 and 3-9:

Implement a Water Quality Management Program within the Project site that will utilize existing proposed natural treatment systems and that will improve the quality of urban runoff from off-site and on-site sources prior to discharging into the Santa Ana River and the Semeniuk Slough.

### **Response 5**

Section 4.14, Public Services, identifies that any hydrocarbon-impacted soil that cannot be treated on site would be transported to an off-site recycling/treatment facility; such facilities accessible for use within Southern and Central California. Facilities include but are not limited to Thermal Remediation Solutions in the City of Azusa, Belridge Producing Complex in Kern County, and Clean Harbors in Kern County.

### **Response 6**

The comment is noted. Based on the impaired water body status for the Newport Slough, BMPs selected for the proposed Project such as biotreatment BMPs that can treat bacteria to a medium to high effectiveness would be used in accordance with the criteria outlined in the 2011 Model WQMP, as set forth in Section 4.9, Table 4.2, of the Draft EIR.



## **REGIONAL AGENCIES AND SPECIAL DISTRICTS**





Comment Letter R1

# AIRPORT LAND USE COMMISSION

FOR ORANGE COUNTY

3160 Airway Avenue • Costa Mesa, California 92626 • 949.252.5170 fax: 949.252.6012

November 7, 2011

Patrick Alford, Planning Manager  
City of Newport Beach, Community Development  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915

**Subject: DEIR Newport Banning Ranch Project**

Dear Mr. Alford:

Thank you for the opportunity to review the proposed Draft Environmental Impact Report (DEIR) for Newport Banning Ranch Project. The project is a proposal for the development of up to 1,375 residential dwelling units, 75,000 square feet of commercial uses, and a 75-room resort inn on approximately 91 acres of the 401.1-acre site. The proposed project area is not located within Noise Impact Zones, Notification Area, or Obstruction Imaginary Surfaces for John Wayne Airport (JWA). Therefore, the Airport Land Use Commission (ALUC) for Orange County has no comment on the proposed DEIR related to land use, noise or safety compatibility with the *Airport Environs Land Use Plan (AELUP) for JWA*.

1

Although the proposed development is located outside of the Airport Planning Areas, please be aware that development proposals which include the construction or alteration of a structure more than 200 feet above ground level, require filing with the Federal Aviation Administration (FAA). Projects meeting this threshold must comply with procedures provided by Federal and State law, with the referral requirements of the ALUC, and with all conditions of approval imposed or recommended by the FAA and ALUC including filing a Notice of Proposed Construction or Alteration (FAA Form 7460-1). The DEIR should address these requirements if building heights in excess of 200 feet above ground level are to be permitted. In order to accurately identify if the proposed project surpasses the 200 feet above ground level threshold, the project description should include the proposed project elevations of buildings using North American Vertical Datum 1988 (NAVD88).

2

In addition, the DEIR should identify if the project allows for heliports as defined in the *Orange County AELUP for Heliports*. Should the development of heliports occur within your jurisdiction, proposals to develop new heliports must be submitted through the city to the ALUC for review and action pursuant to Public Utilities Code Section 21661.5.

3

ALUC Comments  
DEIR Newport Banning Ranch  
11/7/11  
Page 2

Proposed heliport projects must comply fully with the state permit procedure provided by law and with all conditions of approval imposed or recommended by FAA, by the ALUC for Orange County and by Caltrans/Division of Aeronautics. 3 cont.

Thank you again for the opportunity to provide comments on the DEIR for the Newport Banning Ranch Project. Please contact Lea Choum at (949) 252-5123 or via email at [lchoum@ocair.com](mailto:lchoum@ocair.com) should you have any questions related to the Airport Land Use Commission for Orange County.

Sincerely,



Kari A. Rigoni  
Executive Officer

**Letter R1      Airport Land Use Commission for Orange County**  
Kari A. Rigoni, Executive Officer  
November 7, 2011

**Response 1**

The comment is noted.

**Response 2**

No structures in excess of 200 feet above ground level are proposed or would be permitted as a part of the proposed Project.

**Response 3**

Heliports are not proposed as a part of the Project.



**Comment Letter R2a**  
**Costa Mesa Sanitary District**  
... an Independent Special District

September 20, 2011

**Board of Directors**

Robert Ooten  
James Ferryman  
Mike Scheafer  
James Fitzpatrick  
Arthur Perry

Mr. Patrick Alford  
Planning Manager  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658

**Staff**

Scott C. Carroll  
General Manager

Re: Newport Banning Ranch  
Response to Draft EIR from Costa Mesa Sanitary District

Dear Mr. Alford:

Joan Revak  
Office Manager  
Clerk of the District

Thank you for the opportunity to provide comments on the Draft EIR dated 9/3/11 for the proposed Newport Banning Ranch development. The Costa Mesa Sanitary District (CMSD) is an independent special district providing sanitary sewer service and residential solid waste collection in areas adjacent to the proposed development and provides the following clarifications and information.

Robin B. Hamers  
District Engineer  
(949) 631-1731

Alan R. Burns  
Legal Counsel

Marcus D. Davis  
Treasurer

**Phone**  
(949) 645-8400  
**Fax**  
(949) 650-2253

**Address**  
628 W. 19th Street  
Costa Mesa, CA  
92627-2716

As correctly stated in the Draft EIR, the federal government considered a proposed rule in January 2001, the Capacity Assurance, Management, Operation and Maintenance Program Regulation for sanitary sewer system owners; however, the plan was never adopted. Instead, in 2002, the Santa Ana Regional Water Quality Control Board adopted Waste Discharge Requirements (WDR) for the sewer system owners in the region followed by the State of California adopting state-wide Waste Discharge Requirements. The result is both the Costa Mesa Sanitary District and the City of Newport Beach having comprehensive Sewer System Management Plans (SSMPs).

Please note the City of Costa Mesa does not own a sewer system and the reference to the City of Costa Mesa owning facilities near the site should be a reference to the Costa Mesa Sanitary District (Page 4.15-27).

The Draft EIR is also silent on a proposed sewer improvement project that includes the Orange County Sanitation District (OCSD), the Costa Mesa Sanitary District, and the City of Newport Beach (CNB) that impacts the proposed Banning Ranch development. OCSD is currently studying the CMSD concept of abandoning six CMSD pumping stations, the CNB station on Walkabout Circle, a private pumping station at the west end of 18<sup>th</sup> Street, and providing sewer service (by gravity, not with a pumping station) to the north half of the Banning Ranch by constructing the Southwest Costa Mesa Trunk Sewer.



Protecting our community's health and the environment by providing solid waste and sewer collection services.  
[www.cmsdca.gov](http://www.cmsdca.gov)



Newport Banning Ranch Draft EIR  
Response from the Costa Mesa Sanitary District

It is recommended that CNB and/or its EIR consultant, BonTerra, meet with OCSD Project Managers Victoria Pilko and Vicki Francis (714-962-2411) to discuss the impact of the proposed project. One of the potential alignments would place a sewer along the westerly extension of W. 19<sup>th</sup> Street, which is where the north half of the Banning Ranch slopes.

3 cont.

In addition to providing sanitary sewer service, the Costa Mesa Sanitary District provides fully automated trash collection service where residents do not need to pre-sort the recyclables and green waste (everything is placed together in one or more containers where over 50% of the recyclables are recovered at a Materials Recovery Facility). The Costa Mesa Sanitary District currently provides this service to residents of Costa Mesa and certain residents in the City of Newport Beach and the County of Orange.

As correctly stated in the Draft EIR, AB 939 requires each California City and County to divert 50 percent of their solid waste from the landfills. The law requires jurisdictions to report their progress being made to comply with the law by reporting an annual diversion rate to the state. The City of Newport Beach has successfully achieved a 60 percent diversion rate in 2010. However, on September 26, 2008, Governor Schwarzenegger signed into law SB 1016 that builds on AB 939 compliance requirements by implementing a simplified measure of jurisdiction's performance. Instead of using a percentage to calculate solid waste diversion, a per capita disposal rate is calculated whereby each jurisdiction is established an annual per capita disposal rate target to achieve. For Newport Beach, the annual Per Resident Disposal Rate Target is 9.6 pounds. In 2009, the City of Newport Beach successfully met their target by achieving an annual Per Resident Disposal Rate of 5.5 pounds. (Source: <http://www.calrecycle.ca.gov/lqcentral/tools/mars/DrmcMain.asp?VW=Disposal>)

4

According to the Draft EIR, the Newport Banning Ranch development will generate 12.23 pounds of household refuse per day, well above the state mandated target. While the Draft EIR concludes there is enough landfill space to accommodate the additional solid waste, it does not identify source reduction (recycling) methods after the development is completed. It is recommended that the Draft EIR identifies source reduction solid waste programs after the development is completed such as co-mingling or source separating collection services, green waste/organic recycling, composting, white good recycling, e-waste and household hazardous waste recycling, etc.

Thank you again for the opportunity to provide these comments. CMSD staff is available to further discuss these items and possibly consider CMSD providing our services to the residential component of the proposed Newport Banning Ranch Development. I may be reached at (949) 645-8400, or at [scarroll@cmsdca.gov](mailto:scarroll@cmsdca.gov).



Newport Banning Ranch Draft EIR  
Response from the Costa Mesa Sanitary District

---

Sincerely,



Scott Carroll  
General Manager

C: CMSD Board of Directors  
CMSD District Engineer  
OCSD Project Managers

**Letter R2a Costa Mesa Sanitary District**  
Scott Carroll, General Manager  
September 20, 2011

### **Response 1**

Page 4.15-26 has been revised and incorporated into the Final EIR as follows:

#### Capacity Assurance, Management, Operation, and Maintenance Program

In January 2001, the USEPA published a proposed rule intended to clarify and expand permit requirements under the Clean Water Act to further protect public health and the environment from impacts associated with sanitary sewer overflows. The proposed rule is generally referred to as the “Capacity Assurance, Management, Operation, and Maintenance Program Regulation”. The proposed Program’s regulation requires development and implementation of programs intended to meet the performance standard of eliminating sanitary sewer overflows; to provide overflow emergency response plans, system evaluations, and capacity assurance plans; to conduct program audits; and to implement public communication efforts. The proposed rule was not adopted. In 2002, the Regional Water Quality Control Board, Santa Ana Region, adopted Waste Discharge Requirements for sewer system owners followed by the State of California’s adoption of statewide Waste Discharge Requirements.

It is noted that the City of Newport Beach and the Costa Mesa Sanitary District have Sewer System Management Plans.

### **Response 2**

Page 4.15-27 has been revised and incorporated into the Final EIR as follows:

In addition to these on-site facilities, sanitary sewer facilities exist in the Project vicinity... The City of Newport Beach operates wastewater facilities adjacent to the Project site on West Coast Highway, along 19<sup>th</sup> Street, and on Ticonderoga Street.... ~~The City of Costa Mesa~~ Costa Mesa Sanitary District also has facilities near the Project site.

### **Response 3**

The City met with the Orange County Sanitation District project managers. The alignments for the project referenced in the comment have not been finalized; however, it appears that the only portion of the project on the Project site would be located within the reserved right-of-way for 19<sup>th</sup> Street. Therefore, it is not expected to impact the Project.

### **Response 4**

The comment is noted.



**Comment Letter R2b**  
**Costa Mesa Sanitary District**  
*... an Independent Special District*

**Board of Directors**

Robert Ooten  
James Ferryman  
Mike Scheafer  
James Fitzpatrick  
Arthur Perry

November 7, 2011

Mr. Patrick Alford  
Planning Manager  
City of Newport Beach  
3300 Newport Blvd.  
Newport Beach, CA 92658

**Staff**

Scott C. Carroll  
General Manager

Re: Newport Banning Ranch  
Response to Draft EIR from Costa Mesa Sanitary District

Dear Mr. Alford:

Joan Revak  
Office Manager  
Clerk of the District

Robin B. Hamers  
District Engineer  
(949) 631-1731

Alan R. Burns  
Legal Counsel

Marcus D. Davis  
Treasurer

**Phone**  
(949) 645-8400  
**Fax**  
(949) 650-2253

**Address**  
628 W. 19th Street  
Costa Mesa, CA  
92627-2716

On September 20, 2011 the Costa Mesa Sanitary District submitted to you our comments regarding the Draft EIR dated September 3, 2011 for the proposed Newport Banning Ranch development. Please accept this second letter as an amendment to our original comments.

It has been brought to my attention that a letter addressed to the City of Newport Beach, dated April 7, 2009, from the Orange County Local Agency Formation Commission (LAFCO) recommended that the Draft EIR should identify and evaluate plans for the extension and delivery of local retail sewer and solid waste disposal service with the two agencies that provide said services in the area, which is the Costa Mesa Sanitary District (CMSD) and the City of Newport Beach. The Draft EIR does not identify and/or evaluate plans for the possibility of CMSD providing services in the project area.

CMSD is recommending that the Draft EIR be resubmitted to include the consideration of CMSD annexation into the project area. CMSD is a special independent district formed in 1944 under the Sanitary District Act of 1923 to provide sewer and solid waste collection services. CMSD accounts for its revenue and expenses in enterprise funds that are finance through user fees which are collected on the property tax bill as special assessments. The revenues collected from the special assessments must be used specifically for the services CMSD was formed to provide.

Below is a brief summary of our services and some of the benefits annexation would have to the residents of Newport Banning Ranch.



*Protecting our community's health and the environment by providing solid waste and sewer collection services.*  
[www.cmsdca.gov](http://www.cmsdca.gov)

Newport Banning Ranch Draft EIR  
Amended Response from the Costa Mesa Sanitary District  
Page 2 of 4

Sewers

CMUSD effectively and efficiently maintains 220 miles of sewer main, 4,650 manholes and 20 sewer pumping stations. The pump stations have redundant pumping equipment and advanced telemetry that continually reports to CMUSD headquarters at 628 W. 19<sup>th</sup> Street. CMUSD maintains its wastewater program by using a combination of contractors and in-house staff to assist with preventing sewer backups and protecting the environment while at the same time maintaining stable rates. CMUSD has one of the lowest residential sewer rates and competitive commercial sewer rates in Orange County.

Due to the necessity of protecting and preserving coastal wetlands, such as the Upper Newport Bay Nature Preserve, our maintenance activities include a progressive and proactive approach to ensure a safe and reliable sewer collection system. We believe the following maintenance activities have helped CMUSD become an industry leader to preventing sanitary sewer overflows (SSO).

- Sewer Main Preventative Maintenance: This is performed regularly by CMUSD's in-house staff in areas known as "hot spots", which requires more than once a year cleaning because of tree roots, grease build up and/or pipe defects.
- Pump Station Preventative Maintenance: CMUSD performs regular inspections and maintenance of our pump stations to ensure optimal performances that include, but not limited to examination of impellers for wear, changing the oil, checking the motor windings, replacing and/or repairing valves, and the general condition of the pumps.
- Basin Maintenance: This is performed by a contractor where one specific area of CMUSD is first cleaned and then televised to see the structural condition of the sewer main. The cleaning cycles ranges from annually, biennial and triennial.
- Corrective Maintenance: This maintenance is performed to repair defects found throughout the sewer system that have the potential to cause a stoppage or failure. CMUSD hires contractors to repair or rehabilitate these sewer lines.
- Closed Circuit Television (CCTV) Inspection Unit: This unit, which is performed by a contractor, allows CMUSD to visually inspect sewer mains through the use of a camera that transmit video through fiber optic cable to the above ground vehicle.

2 cont.

The maintenance activities mentioned above have greatly improved our efforts to protecting the environment and complying with the State of California's Waste Discharge Requirements for Sanitary Sewer Systems Permit (WDR). However, what sets us apart from other wastewater agencies are the programs offered to CMUSD residents along with the implementation of innovative sewer technology such as the following:

Newport Banning Ranch Draft EIR  
Amended Response from the Costa Mesa Sanitary District  
Page 3 of 4

- Sewer Lateral Assistance Program: Residents can receive up to \$1,800 in reimbursement cost to repairing and/or maintaining their sewer lateral.
- Residential FOG Recycling Program: Residents can receive a free FOG funnel to dispose their unwanted cooking grease and then safely dispose the material at a FOG drop off site located at Orange Coast College. The FOG collected is then recycled into usable products such as bio-fuel, candles, wax and cosmetics.
- Sewer Technology: CMSD is using the latest "no-dig" technology to rehabilitate sewer pipes such as pipe bursting, fold and form, cured-in-place-pipe (CIPP), top hat, short lining as well as polyurethane lining for manholes. CMSD has also strategically placed smart covers throughout our service area to detect high wastewater and we are in the planning stages of installing permanent emergency stand-by pumps at our most critical pump stations.

Solid Waste

CMSD, through an exclusive franchise, provides solid waste and recycling collection services to over 21,000 households in Costa Mesa and in a portion of Newport Beach. We offer a unique commingling program where refuse and recycling materials are placed in the same container and then the recycling material is removed at a material recovery facility in Stanton before disposing the refuse at a landfill. CMSD has achieved a 54% diversion rate and has assisted the City of Costa Mesa meet its State required per capita disposal rate by achieving 6.1 Pounds per Day in 2010. In addition, CMSD solid waste rates are considered competitive in Orange County and our residents enjoy many special programs at no additional cost. These programs are listed below:

2 cont.

- Lockable containers to prevent scavenging;
- Composting workshops (earth machines are available to CMSD customers for only \$20);
- Door-to-Door household hazardous waste collection for seniors and disabled residents;
- Sharps and Pharmaceutical Drop Off Program;
- Bulk Item Collection Program. Resident receive three bulk item collections per year and can place up to ten items per collection;
- Christmas Tree Recycling Program;
- Tours of the material recovery facility and landfill;
- Subscribe to unwanted advertising mail;

In addition to these programs, CMSD has embarked on zero waste strategies to help protect the public health, build a sustainable economy, reduce resource depletion and to guide residents in changing their lifestyles and practices to emulate sustainable natural cycles. It's important to point out that zero waste is not about getting to zero, but rather it's about being on the path to zero and we believe these efforts can be made available for the project area to assist the City of Newport Beach with compliance of SB 1016 and



Newport Banning Ranch Draft EIR  
Amended Response from the Costa Mesa Sanitary District  
Page 4 of 4

AB 341, which requires recycling programs be offered to commercial businesses and will eventually lead to a 75% diversion mandate. As mentioned in our original response, the EIR does not include methods to reducing 12.23 pounds of household refuse per day the area will generate as indicated in the analysis. CMSD's successful waste diversion programs and zero waste strategies can help in achieving source reduction for Newport Banning Ranch.

2 cont.

In conclusion, CMSD encourages you to resubmit the Draft EIR to consider the Costa Mesa Sanitary District's annexation to the project area, which can serve to promote zero waste strategies to complying with SB 1016 and AB 341 as well as serving the area with innovative wastewater technologies and solutions to protecting the environment. In addition, based on comments provided by Mesa Consolidated Water District letter, the Draft EIR appears to be deficient in that it does not include an alternative or a mitigation measure that would have evaluated the potential reduction of energy and related impact reductions associated with water service from 100% local resources. It is evident from Mesa Water's analysis that the project can be served from local groundwater water supplies that would: 1) reduce energy demand/consumption of the project; 2) the reduced energy consumption would reduce state and region-wide air quality and greenhouse gas emissions; 3) reduction in GHG would reduce potential significant cumulative impacts associated with global climate change identified in the Draft EIR. Use of local water supplies would also have the potential to reduce impacts to the Bay Delta associated with the use of imported water through the State Water Project. A thorough disclosure and analysis of impacts associated with alternative water supply sources is needed in the EIR.

3

Thank you again for the opportunity to provide these comments and I look forward to hearing from you soon.

Sincerely,



Scott Carroll  
General Manager

Attachment: LAFCO Letter dated April 7, 2009

C: CMSD Board of Directors  
City of Costa Mesa  
Mesa Consolidated Water District  
Orange County Sanitation District  
Local Agency Formation Commission



LOCAL AGENCY FORMATION COMMISSION

ORANGE COUNTY

April 7, 2009

CHAIR  
**SUSAN WILSON**  
Representative of  
General Public

VICE CHAIR  
**PETER HERZOG**  
Councilmember  
City of Lake Forest

**CHERYL BROTHERS**  
Councilmember  
City of Fountain Valley

**BILL CAMPBELL**  
Supervisor  
3<sup>rd</sup> District

**JOHN MOORLACH**  
Supervisor  
2<sup>nd</sup> District

**ARLENE SCHAFER**  
Director  
Costa Mesa  
Sanitary District

**JOHN WITHERS**  
Director  
Irvine Ranch Water District

ALTERNATE  
**PAT BATES**  
Supervisor  
5<sup>th</sup> District

ALTERNATE  
**PATSY MARSHALL**  
Councilmember  
City of Buena Park

ALTERNATE  
**RHONDA MCCUNE**  
Representative of  
General Public

ALTERNATE  
**CHARLEY WILSON**  
Director  
Santa Margarita  
Water District

**JOYCE CROSTHWAITE**  
Executive Officer

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658

Subject: Notice of Preparation Draft Environmental Impact Report

Dear Ms. Linn,

The Orange County Local Agency Formation Commission (LAFCO) has reviewed the *Notice of Preparation of a Draft Environmental Impact Report* for the Newport Banning Ranch project. LAFCO appreciates this opportunity to review and comment on the NOP.

LAFCO was created pursuant to the Cortese-Knox Local Government Reorganization Act of 1985, now known as the Cortese-Knox-Hertzberg Local Government Reorganization Act as amended in 2000 ("Act"). (Govt. Code §56000 *et seq.*) Under the Act, LAFCO is required to make determinations regarding an annexation and to certify the environmental impact report of a Lead Agency (Govt. Code §56881). The Act also established the factors which LAFCO must consider in making its determinations, including any policies adopted by LAFCO to create planned, orderly and efficient patterns of development (Govt. Code §56668). Because of this role and pursuant to Section 21069 of the Public Resources Code, LAFCO is a responsible agency for the Banning Ranch project.

The Draft Environmental Impact Report ("DEIR") should address the impacts and any necessary mitigation, including but not limited to the annexation process. In particular, the DEIR should address the factors as identified in Government Code Section 56668. These factors include, but are not limited to, the following considerations:

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April 7, 2008  
NOP – Banning Ranch Project  
Page 2 of 4

- **Project Description**

**Annexation:** The “Project Summary” section of the NOP does not specifically discuss the future annexation of the project territory to the City of Newport Beach. The “Project Description” in the Draft EIR should clearly identify annexation of the unincorporated portions of the project area as part of the “whole of the project” requiring LAFCO review and approval. The Draft EIR should also discuss the timing of annexation relative to timing of the proposed development plans.

**Other LAFCO Actions:** In addition to annexation, the “Project Description” should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. These should include, but are not limited to the discussion of the concurrent annexation of the area to the Mesa Consolidated Water District and/or the Costa Mesa Sanitary District.

- **Public Service and Facilities**

Section 56653 of the Act requires that each application for a change of organization include “a plan for providing services within the affected territory.” Among other things, the plan for services must indicate “when those services can feasibly be extended to the affected territory.” (Govt. Code §56653(b)(3).) Although the focus of Subsection 56653(b)(3) is on the timing of the *initiation* of services, the point of this subsection, especially when considered with the remaining requirements of Section 56653, is on continuous, reliable services to the affected area. The EIR’s discussion of impacts in the area of public services should be made with reference to and consistent with the plan for services submitted under the Act, in particular, Section 56668, containing the criteria for approval of the annexation. (Similar discussion and references should be made in the analysis of Land Use/Planning and Population/Housing.)

The Public Services and Facilities discussion should also include a discussion of the ability of the City to provide services (Govt. Code §56668(j)). These services are discussed in detail below.

**Water:** The project area is currently not within the boundary of an agency that provides retail water services. The two agencies providing retail water services to surrounding areas are the City of Newport Beach and Mesa Consolidated Water District. The Draft EIR should identify and evaluate plans for the extension and delivery of retail water services to the project area.

**Sewer:** The project area is currently not within the boundary of an agency providing local retail sewer services. The two agencies providing local retail sewer services to surrounding

April 7, 2008  
NOP – Banning Ranch Project  
Page 3 of 4

areas are the City of Newport Beach and the Costa Mesa Sanitary District. The Draft EIR should identify and evaluate plans for the extension and delivery of local retail sewer services to the project area. The Draft EIR should also evaluate the connection of local retail sewer services for the project to regional sewer facilities provided by the Orange County Sanitation District.

**Waste Disposal:** The project area is currently not within the boundary of an agency providing solid waste disposal services. The two agencies providing solid waste disposal services in the area are the Costa Mesa Sanitary District and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of solid waste disposal services to the project area.

**Street Sweeping:** The two agencies providing street sweeping services to surrounding areas are the City of Costa Mesa and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of street sweeping services to the project area.

**Fire Protection and Emergency Response Services:** The project area is currently not within the boundary of an agency providing fire protection and emergency response services. The two agencies responding to emergency calls in the surrounding areas are the City of Newport Beach and the City of Costa Mesa. The Draft EIR should identify and evaluate plans for the extension and delivery of fire protection and emergency response services to the project area.

- **Utilities**

This section or the Section of Public Services and Facilities should include a discussion of water supplies as required under Subsection 56668(k) of the Act, including a discussion of the project's consistency with relevant Urban Water Management Plans.

- **Water Quality**

The Draft EIR should address storm water permitting requirements, including (preparation of Stormwater Pollution Prevention Plan), change in surface imperviousness due to the Project, drainage basins, emergency response to spills, and general compliance with the regional stormwater permit.

April 7, 2008  
NOP – Banning Ranch Project  
Page 4 of 4

Thank you for this opportunity to respond to the NOP. Please send one complete set of the DEIR to me at the address above. If you have any questions or concerns regarding this response, please contact me or Benjamin Legbandt, Policy Analyst, either by email at [blegbandt@oclafco.org](mailto:blegbandt@oclafco.org) or by phone at (714) 834-2556.

Best Regards,

A handwritten signature in black ink that reads "Joyce Crosthwaite". The signature is written in a cursive, flowing style.

Joyce Crosthwaite  
Executive Officer

**Letter R2b    Costa Mesa Sanitary District**  
Scott Carroll, General Manager  
November 7, 2011

**Response 1**

It is acknowledged that both the City of Newport Beach (City) and the Costa Mesa Sanitary District could serve the proposed Project. The Applicant has proposed and the Draft EIR addresses the potential effects of the City serving the Project. As noted in the Draft EIR, the City operates wastewater facilities adjacent to the Project site on West Coast Highway, along 19<sup>th</sup> Street, and on Ticonderoga Street and can adequately serve the Project. If the City was not in a position to serve the wastewater and solid waste disposal requirements of the Project, the Draft EIR would have addressed alternative service providers.

**Response 2**

Information regarding services provided by the Costa Mesa Sanitary District is noted.

**Response 3**

The *Water Supply Assessment, Newport Banning Ranch*, prepared by AECOM (May 2010) was approved by the Newport Beach City Council on October 12, 2010. The Water Supply Assessment (WSA) was prepared in accordance with Section 10910(d)–10910(f) of the *California Water Code*. The City of Newport Beach 2010 Urban Water Management Plan was adopted by the Newport Beach City Council on June 14, 2011. The Project's WSA is consistent with the assumptions of both the 2005 and 2010 Urban Water Management Plans. The opinions of the Costa Mesa Sanitary District are noted.



CHAIR  
**JOHN MOORLACH**  
Supervisor  
2<sup>nd</sup> District

VICE CHAIR  
**CHARLEY WILSON**  
Director  
Santa Margarita  
Water District

**PAT BATES**  
Supervisor  
5<sup>th</sup> District

**JOE CARCHIO**  
Councilmember  
City of Huntington Beach

**PETER HERZOG**  
Councilmember  
City of Lake Forest

**SUSAN WILSON**  
Representative of  
General Public

**JOHN WITHERS**  
Director  
Irvine Ranch Water District

ALTERNATE  
**BILL CAMPBELL**  
Supervisor  
3<sup>rd</sup> District

ALTERNATE  
**JAMES FISLER**  
Director  
Mesa Consolidated  
Water District

ALTERNATE  
**DEREK J. MCGREGOR**  
Representative of  
General Public

ALTERNATE  
**BOB RING**  
Councilmember  
City of Laguna Woods

**JOYCE CROTHWAITE**  
Executive Officer

**Comment Letter R3**  
**LOCAL AGENCY FORMATION COMMISSION**  
**ORANGE COUNTY**

November 4, 2011

Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915

Subject: Comments – Newport Banning Ranch Project Draft  
Environmental Impact Report

Dear Mr. Alford,

The Orange County Local Agency Formation Commission (OC LAFCO) has reviewed the *Draft Environmental Impact Report* (Draft EIR) for the Newport Banning Ranch Project (Project). OC LAFCO appreciates this opportunity to review and comment on the Draft EIR pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.; “CEQA”) and the State CEQA Guidelines (14 C.C.R. § 15000 et seq.).

OC LAFCO operates under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code Section 56000 et seq.). Under the Act, OC LAFCO is required to make determinations regarding an annexation and to consider the environmental impact report of a Lead Agency (Government Code Section 56881). According to the Draft EIR, the City of Newport Beach is Lead Agency for purposes of the Project and is responsible for certifying the EIR. The Act also establishes the factors which OC LAFCO must consider in making its determinations for a proposed change of organization, including any policies adopted by OC LAFCO to create planned, orderly and efficient patterns of development (Government Code Section 56668). Because of this role and pursuant to Section 21069 of the Public Resources Code and Title 14, California Code of Regulations, section 15381, OC LAFCO would be a responsible agency for annexation of the Banning Ranch project to an adjacent city and/or special district.

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Response to Draft EIR – Newport Banning Ranch Project  
Page 2 of 7

During our review of the Draft EIR for the Banning Ranch Project, we have noted that there are several missing components that are required for use of the EIR by OC LAFCO as a responsible agency. (See State CEQA Guidelines § 15096(d) [responsible agency's comments on the Draft EIR should focus on shortcomings in the EIR within the responsible agency's area of expertise].) A discussion of each of these components is referenced below.

As you know, each responsible agency is required to provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible agency's area of statutory responsibility that must be included in the Draft EIR. (State CEQA Guidelines §§ 15082(b) & 15096(b)(2).) In accordance therewith, most of the comments below were also included in the *Response to the Notice of Preparation of the Draft Environment Impact Report* submitted by Orange County LAFCO to the City of Newport Beach on April 7, 2009 (see attached).

The Final Environmental Impact Report ("EIR") must address the impacts of all of the project components, including but not limited to the annexation process, and all necessary and feasible mitigation. In particular, the EIR should address the factors as identified in Government Code Section 56668. These factors include, but are not limited to, the following considerations:

**1. As a responsible agency, LAFCO must independently review and consider the adequacy of the lead agency's environmental documents prior to approving any portion of the proposed project. (State CEQA Guidelines § 15096.)**

a. The Final Project Level Environmental Impact Report must be adequate for the purposes of annexation and should include substantive discussion of the LAFCO annexation process. (State CEQA Guidelines § 15096.)

b. The Final EIR should include the approximately 60 acres of unincorporated territory currently excluded from project area. The Draft EIR does not include the entirety of the Banning Ranch area and excludes approximately 60 acres located on the eastern side of the Santa Ana River (Referred to as ACOE Wetlands Restoration Area). Exclusion of the 60 acres of ACOE Wetlands Restoration Area would create an "island or corridor of unincorporated territory" which, as stated above, is a specific factor to be considered in the review of annexation proposals under Government Code Section 56668(f). The omission of the ACOE Wetlands from the Final EIR would require the preparation of a Supplemental EIR to analyze the environmental impacts to the additional 60 acres discussed above as part of any application for annexation of Banning Ranch. This would financially impact the annexation proponent and also impact the timing of the proposed annexation.

Response to Draft EIR – Newport Banning Ranch Project  
Page 3 of 7

<p><b>2. The “Project Description” must be clearly articulated and must include a description of the proposed annexation of the project area to the City of Newport Beach.</b></p> <p>a. The “Project Summary” section of the Draft EIR does not discuss the future annexation of the project territory to the City of Newport Beach. (See State CEQA Guidelines § 15123(b)(2), [summary section “shall identify areas of controversy known to the Lead Agency including issues raised by agencies and the public”].)</p>	3
<p>b. The “Project Description” in the Final EIR must clearly identify annexation of the unincorporated portions of the project area as part of the “whole of the project” requiring LAFCO review and approval. (See State CEQA Guidelines § 15124(d)(1)(B); see also State CEQA Guidelines § 15378(a) [defining the term “project” as including the whole of an action]; see also State CEQA Guidelines § 15378(c) [explaining that the word “project” includes “activity [that] is being approved and which may be subject to several discretionary approvals by governmental agencies”].) The Final EIR must also discuss the timing of annexation relative to timing of the proposed development plans.</p>	4
<p>c. Other LAFCO actions: In addition to annexation, the “Project Description” should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. (State CEQA Guidelines § 15124(d)(1)(B).) These agencies may include, but are not limited to the Mesa Consolidated Water District and/or the Costa Mesa Sanitary District.</p>	5
<p>d. “Project Objectives” must include discussion of the eventual annexation of the Newport Banning Ranch Project Area to the City of Newport Beach. (See State CEQA Guidelines § 15124(b) [“[t]he statement of objectives should include the underlying purposes of the project”].)</p>	6
<p>e. “Proposed Implementation Plan” must include discussion of the timing or phasing of the annexation of the project area to the City of Newport Beach in relation to the other actions related to the development of the Newport Banning Ranch Project Area.</p>	7
<p>f. “Components of Newport Banning Ranch” includes a reference to annexation (Section 3.9.3), but annexation of the project area must be expressly listed as an independent component of the project.</p>	8



Response to Draft EIR – Newport Banning Ranch Project  
Page 4 of 7

<p>g. “Pre-Annexation and Development Agreement” states the availability of the Pre-Annexation Agreement on the City’s website. While there is a document available on the City’s website, it is not complete and does not reflect what is described in Section 3.12 of the Project Description. The current form of the Pre-Annexation Agreement does not allow for full consideration of the impacts the development may have on the project area. (See <i>County of Inyo v. City of Los Angeles</i> (1977) 71 Cal.App.3d 185, 192, [holding “a finite project description is <i>indispensable</i> to an informative, legally adequate EIR”].)</p>	9
<p>h. As required by State CEQA Guidelines section 15124(d)(1)(A), the “Intended Use of the EIR” includes LAFCO as a responsible agency under Section 3.14.2 of the Project Description, stating “annexation would include approximately 361 acres of the 401-acre Project site into the City and a change in service district boundaries for water service.” For purposes of annexation LAFCO would be a responsible agency. As stated earlier, LAFCO is prohibited from approving annexation of territory that would result in the creation of an unincorporated county island. (Gov. Code § 56744.)</p>	10
<p><b>3. The “Public Services and Facilities” (Section 4.14) should include discussion of all services required by the development and the timing of those services to the project area.</b></p> <p>a. Government Code section 56653 requires that each application for a change of organization include a “plan for providing services within the affected territory.” Among other things, the plan for services must indicate “when those services can feasibly be extended to the affected territory” (Gov’t Code 56653(b)(3)). Although the focus of Subsection 56653(b)(3) is on the timing of the <i>initiation</i> of services, the point of this subsection, especially considered with the remaining requirements of Section 56653, is on continuous, reliable services to the affected area. The Final EIR’s discussion of impacts in the area of public services must be made with reference to and consistent with the plan for services submitted under the Act, in particular, Government Code section 56668, which contains the criteria for approval of the annexation of the project area.</p>	11
<p>b. The “Public Services and Facilities” section omits discussion of street sweeping services. The LAFCO response to the draft NOP requested discussion of the City’s ability to provide services to the project area. These services identified in the LAFCO response letter included: water, sewer, waste disposal, street sweeping, fire protection and emergency</p>	12

Response to Draft EIR – Newport Banning Ranch Project  
Page 5 of 7

response. Both Costa Mesa and Newport Beach are equally capable of providing street sweeping services to the area and analysis of this service from these agencies should be included in the Final EIR.	12 cont.
c. The “Public Services and Facilities” section omits comparison of the Fire Protection and Emergency Response to the Project Area by the Cities of Costa Mesa and Newport Beach. The LAFCO response to the NOP for this project specifically requested the analysis of Fire Protection and Emergency Response Services by both Cities. Section 4.14.1 describes the existing conditions and specifically cites the City of Costa Mesa as the service provider to the areas adjacent to the Project Area including service to the Newport Terrace residential community, located in the City of Newport Beach. The supporting document for the Fire Protection (Appendix K) discussion in section 4.14.1 also omits any discussion of fire service by the City of Costa Mesa. Both Costa Mesa and Newport Beach are capable of providing fire suppression and emergency response services to the Project Area and service provision by each agency should be analyzed in the Final EIR.	13
<b>4. The “Utilities” (Section 4.15) should be verified for accuracy of analysis regarding water and sewer infrastructure.</b>	
a. Please note the City of Costa Mesa does not own a sewer system and the reference to the City of Costa Mesa owning sewer infrastructure on page 4.15-27 is incorrect. The infrastructure is owned by the Costa Mesa Sanitary District.	14
b. The <i>Sewer and Water Infrastructure Facilities Plan</i> identified as the reference document to the Draft EIR also includes the erroneous reference to the City of Costa Mesa as the sewer provider.	15
c. The <i>Sewer and Water Infrastructure Facilities Plan</i> identified as the reference document to the Draft EIR states “the project site is included in the City of Newport Beach’s service area.” This statement does not coincide with the City of Newport Beach 2010 Urban Water Management Plan (UWMP) which shows the project area as outside of the Newport Beach Water Service Area. The UWMP also depicts the Mesa Consolidated Water District as the service provider to the areas of Newport Beach north and east of the proposed project area – it is not made clear in the Draft EIR why the Mesa Consolidated Water District is not considered or evaluated as a possible provider of retail water service to the project area.	16

Response to Draft EIR – Newport Banning Ranch Project  
Page 6 of 7

<p>d. The LAFCO Response to the Notice of Preparation of the Draft EIR included a request for the Draft EIR to include discussion of the relative merits of the local agencies capable of providing water, sewer, and solid waste disposal service to the area. This analysis is also omitted in the Draft EIR which almost assumes that the City of Newport is the only provider of these services to the area.</p>	17
<p>e. The analysis of water and sewer providers to the area does not include a discussion of the levels of service or the rates paid by future recipients of these services.</p>	18
<p>5. The EIR should identify the long-term funding mechanism and land owner responsible for the sustained maintenance of the open space and habitat conservation areas. (Pub. Res. Code § 21081.6; State CEQA Guidelines § 15097.) The “Project Description” should be amended to address the following considerations:</p> <p>a. The “Project Objectives” includes reference to the “creation of an endowment or other funding program.” The Final EIR should include discussion of the specific funding program and long term administration of the sustained maintenance of the open space and habitat conservation areas. Without such a description, the mitigation measures are uncertain and potentially unenforceable. (See State CEQA Guidelines § 15126.4(a)(2) [explaining that mitigation measures must be fully enforceable through, among other things, legally binding instruments].)</p>	19
<p>b. The “Proposed Implementation Plan” must be expanded to include similar discussion of the long term maintenance of the open space and habitat conservation post development. Absent clarification, the mitigation measure is vague and uncertain and potentially unenforceable. (See State CEQA Guidelines § 15126.4(a)(2) [explaining that mitigation measures must be fully enforceable through, among other things, legally binding instruments].)</p>	20
<p>c. The land owner should be identified as the responsible party or alternatively, another responsible party should be identified as the long-term provider of maintenance to the open space and habitat conservation areas. (Pub. Res. Code § 21081.6 [mitigation monitoring and reporting program is intended to ensure compliance].)</p>	11
<p>6. The Final EIR should include a “No Annexation Alternative” in Section 7.</p> <p>a. Annexation of the unincorporated County Island commonly referred to as <i>Banning Ranch</i> is under the sole discretion of the Orange County LAFCO</p>	22

Response to Draft EIR – Newport Banning Ranch Project  
Page 7 of 7

and cannot be assumed as a definite outcome. Thus, a reasonable range of alternatives in the Draft EIR must include a "No Annexation Alternative". (State CEQA Guidelines § 15126.6.) LAFCO understands that CEQA requires that an EIR "describe a range of reasonable alternatives to the project" and a "No Annexation Alternative" is reasonable here given that the authority to grant such an annexation rests with a body other than the Lead Agency for the proposed Project. Decision-makers and the public should be informed of the environmental consequences of the proposed Project if it is not successfully annexed into the City of Newport Beach. Specifically, the "No Annexation Alternative" must adequately address the following *significant* impacts under that alternative:

22 cont.

- i. The creation of a large, developed, and inhabited unincorporated County Island consisting of a 1,375-unit residential development project, 75,000 square feet of commercial development, and a 75 room resort inn.
- ii. Reduced levels of services to Banning Ranch residents for:
  1. Police protection
  2. Fire protection
  3. Traffic enforcement and accident investigation
  4. Roads (maintenance, street lighting, landscaping, sweeping).
  5. Code enforcement
  6. Local representation and accountability

Thank you for this opportunity to respond to the Draft EIR. Please send one complete set of the Final EIR to me at the address above at least ten days prior to the date on which the City Council certifies the EIR. (State CEQA Guidelines § 15088(b).) If you have any questions or concerns regarding this response, please contact me ([jcrosthwaite@oclafco.org](mailto:jcrosthwaite@oclafco.org)) or Benjamin Legbandt, Policy Analyst II ([blegbandt@oclafco.org](mailto:blegbandt@oclafco.org)) by email or at (714) 834-25456.

Best regards,



Joyce Crosthwaite  
Executive Officer



LOCAL AGENCY FORMATION COMMISSION

ORANGE COUNTY

April 7, 2009

CHAIR  
**SUSAN WILSON**  
Representative of  
General Public

VICE CHAIR  
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City of Fountain Valley

**BILL CAMPBELL**  
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3<sup>rd</sup> District

**JOHN MOORLACH**  
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2<sup>nd</sup> District

**ARLENE SCHAFER**  
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Costa Mesa  
Sanitary District

**JOHN WITHERS**  
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Irvine Ranch Water District

ALTERNATE  
**PAT BATES**  
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ALTERNATE  
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General Public

ALTERNATE  
**CHARLEY WILSON**  
Director  
Santa Margarita  
Water District

**JOYCE CROTHWAITE**  
Executive Officer

Debby Linn, Contract Planner  
City of Newport Beach  
Planning Department  
3300 Newport Boulevard  
Newport Beach, California 92658

Subject: Notice of Preparation Draft Environmental Impact Report

Dear Ms. Linn,

The Orange County Local Agency Formation Commission (LAFCO) has reviewed the *Notice of Preparation of a Draft Environmental Impact Report* for the Newport Banning Ranch project. LAFCO appreciates this opportunity to review and comment on the NOP.

LAFCO was created pursuant to the Cortese-Knox Local Government Reorganization Act of 1985, now known as the Cortese-Knox-Hertzberg Local Government Reorganization Act as amended in 2000 ("Act"). (Govt. Code §56000 *et seq.*) Under the Act, LAFCO is required to make determinations regarding an annexation and to certify the environmental impact report of a Lead Agency (Govt. Code §56881). The Act also established the factors which LAFCO must consider in making its determinations, including any policies adopted by LAFCO to create planned, orderly and efficient patterns of development (Govt. Code §56668). Because of this role and pursuant to Section 21069 of the Public Resources Code, LAFCO is a responsible agency for the Banning Ranch project.

The Draft Environmental Impact Report ("DEIR") should address the impacts and any necessary mitigation, including but not limited to the annexation process. In particular, the DEIR should address the factors as identified in Government Code Section 56668. These factors include, but are not limited to, the following considerations:

12 Civic Center Plaza, Room 235, Santa Ana, CA 92701  
(714) 834-2556 • FAX (714) 834-2643  
<http://www.oclafco.org>

April 7, 2008  
NOP – Banning Ranch Project  
Page 2 of 4

- **Project Description**

Annexation: The “Project Summary” section of the NOP does not specifically discuss the future annexation of the project territory to the City of Newport Beach. The “Project Description” in the Draft EIR should clearly identify annexation of the unincorporated portions of the project area as part of the “whole of the project” requiring LAFCO review and approval. The Draft EIR should also discuss the timing of annexation relative to timing of the proposed development plans.

Other LAFCO Actions: In addition to annexation, the “Project Description” should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. These should include, but are not limited to the discussion of the concurrent annexation of the area to the Mesa Consolidated Water District and/or the Costa Mesa Sanitary District.

- **Public Service and Facilities**

Section 56653 of the Act requires that each application for a change of organization include “a plan for providing services within the affected territory.” Among other things, the plan for services must indicate “when those services can feasibly be extended to the affected territory.” (Govt. Code §56653(b)(3).) Although the focus of Subsection 56653(b)(3) is on the timing of the *initiation* of services, the point of this subsection, especially when considered with the remaining requirements of Section 56653, is on continuous, reliable services to the affected area. The EIR’s discussion of impacts in the area of public services should be made with reference to and consistent with the plan for services submitted under the Act, in particular, Section 56668, containing the criteria for approval of the annexation. (Similar discussion and references should be made in the analysis of Land Use/Planning and Population/Housing.)

The Public Services and Facilities discussion should also include a discussion of the ability of the City to provide services (Govt. Code §56668(j)). These services are discussed in detail below.

Water: The project area is currently not within the boundary of an agency that provides retail water services. The two agencies providing retail water services to surrounding areas are the City of Newport Beach and Mesa Consolidated Water District. The Draft EIR should identify and evaluate plans for the extension and delivery of retail water services to the project area.

Sewer: The project area is currently not within the boundary of an agency providing local retail sewer services. The two agencies providing local retail sewer services to surrounding



April 7, 2008  
NOP – Banning Ranch Project  
Page 3 of 4

areas are the City of Newport Beach and the Costa Mesa Sanitary District. The Draft EIR should identify and evaluate plans for the extension and delivery of local retail sewer services to the project area. The Draft EIR should also evaluate the connection of local retail sewer services for the project to regional sewer facilities provided by the Orange County Sanitation District.

**Waste Disposal:** The project area is currently not within the boundary of an agency providing solid waste disposal services. The two agencies providing solid waste disposal services in the area are the Costa Mesa Sanitary District and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of solid waste disposal services to the project area.

**Street Sweeping:** The two agencies providing street sweeping services to surrounding areas are the City of Costa Mesa and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of street sweeping services to the project area.

**Fire Protection and Emergency Response Services:** The project area is currently not within the boundary of an agency providing fire protection and emergency response services. The two agencies responding to emergency calls in the surrounding areas are the City of Newport Beach and the City of Costa Mesa. The Draft EIR should identify and evaluate plans for the extension and delivery of fire protection and emergency response services to the project area.

- **Utilities**

This section or the Section of Public Services and Facilities should include a discussion of water supplies as required under Subsection 56668(k) of the Act, including a discussion of the project's consistency with relevant Urban Water Management Plans.

- **Water Quality**

The Draft EIR should address storm water permitting requirements, including (preparation of Stormwater Pollution Prevention Plan), change in surface imperviousness due to the Project, drainage basins, emergency response to spills, and general compliance with the regional stormwater permit.



April 7, 2008  
NOP – Banning Ranch Project  
Page 4 of 4

Thank you for this opportunity to respond to the NOP. Please send one complete set of the DEIR to me at the address above. If you have any questions or concerns regarding this response, please contact me or Benjamin Legbandt, Policy Analyst, either by email at [blegbandt@oclafco.org](mailto:blegbandt@oclafco.org) or by phone at (714) 834-2556.

Best Regards,

A handwritten signature in black ink that reads "Joyce Crosthwaite". The signature is written in a cursive, flowing style.

Joyce Crosthwaite  
Executive Officer

**Letter R3      Local Agency Formation Commission Orange County**

Joyce Crosthwaite, Executive Officer

November 4, 2011

**Response 1**

Please refer to the following responses to Comments 3, 4, 5, and 8.

As addressed in LAFCO Orange County's Project Processing Policies and Procedures Manual, LAFCO incorporation applications are considered based on (1) demonstrated need; (2) feasibility of the city or district to provide services; (3) the ability of residents to pay for services, if applicable; (4) the long-term efficiency and quality of services proposed.

As set forth in Government Code Section 56658 and summarized in LAFCO Orange County's Project Processing Policies and Procedures Manual:

- Any petitioner or legislative body desiring to initiate proceedings must submit an application to the Executive Officer of the LAFCO.
- The Executive Officer provides notice of the application to each interested and applicable State and local agency, the county committee on school district organization, and each school superintendent whose school district overlies the subject area and request the affected agencies to submit the required data to the commission within a reasonable timeframe established by the Executive Officer.
- The Executive Officer has 30 days to determine if the application is complete and acceptable for filing or whether the application is incomplete. If the appropriate fees have been paid, an application is deemed accepted for filing if no determination has been made by the Executive Officer within the 30-day period.
- When an application is accepted for filing, the Executive Officer must immediately issue a certificate of filing to the applicant which identifies the date upon which the proposal will be heard by the commission. Consideration of a proposal occurs at a regular public meeting. The date of the hearing shall be not more than 90 days after issuance of the certificate of filing or after the application is deemed to have been accepted, whichever is earlier.
- If the commission initiates the proposal, LAFCO staff will commence its review. This would include agency participation, environmental review, a property tax exchange (if applicable), and an Executive Officer's report and recommendation.

**Response 2**

The City of Newport Beach General Plan designates approximately 465 acres as "Banning Ranch" for urban development if not acquired as permanent open space. Of the approximately 465 acres, referred to as Banning Ranch in the General Plan, approximately 64 acres were acquired by the federal government as permanent open space and have been restored as wetlands by the U.S. Army Corps of Engineers (USCCE) to be maintained in perpetuity by the USACE as a wetlands habitat. Because the 64 acres comprising the USACE wetlands will remain as permanent open space owned and maintained by the federal government in perpetuity, this area is not designated by the City's General Plan for urban development, and for this reason is not a part of the proposed Newport Banning Ranch Project. The USACE's permanent open space wetlands do not present a need for public facilities and services to be

extended to the area. In summary, because the USACE wetlands (1) is not a part of the proposed Project; (2) is not designated by the City's General Plan for urban development, and (3) does not require the extension of public facilities or services to the wetlands, neither the Applicant nor the City of Newport Beach would be a proponent of annexing the USACE wetlands to the City.

The remaining approximately 401 acres comprising Banning Ranch as depicted in the City of Newport Beach General Plan is described as Planning Subarea 4 in the General Plan and designated for urban development. Approximately 361 acres of Planning Subarea 4 are located in the City's Sphere of Influence and approximately 40 acres are located within the City limits. The General Plan lists the following urban development options for Planning Subarea 4:

Option 1: Open space and an active community park.

Option 2: Residential village to include open space, community park, residential, resort and commercial uses.

The Newport Banning Ranch Project proposes to implement General Plan urban development Option 2 for Planning Subarea 4. As part of the Project, the approximately 361 acres of Planning Subarea 4 within the Newport Beach Sphere of Influence is proposed for annexation to the City of Newport Beach. Should the proposed Project be approved by the City and receive a Coastal Development Permit from the California Coastal Commission, a petition for annexation of the 361 acres within the Newport Beach Sphere of Influence would be submitted to Orange County LAFCO either by the Applicant or the City of Newport Beach.

### Response 3

Section 2.4 of the Draft EIR addresses areas of controversy and unresolved issues. While it is understood that the Applicant is proposing the incorporation of that portion of the property located within the City of Newport Beach's Sphere of Influence, the property's incorporation was not raised by the public or agencies as a controversial issue. Section 3.0, Project Description clearly notes that LAFCO is responsible for reviewing and approving proposed jurisdictional boundary changes, including (1) annexations and detachments of territory to and/or from cities and special districts; (2) incorporations of new cities; (3) formations of new special districts; and (4) consolidations, mergers, and dissolutions of existing districts. For the Newport Banning Ranch Project, the annexation would include approximately 361 acres of the 401-acre Project site into the City and a change in service district boundaries for water service.

### Response 4

Please refer to the response to Comment 3.

The following narrative is incorporated into the Final EIR, Section 3.0, Project Description, as Section 3.14, Annexation, to provide additional explanation regarding the annexation process.

Following the final approval of the Project by the City and the Coastal Commission, and following the consolidation of oil production wells into the OF land use district as described in the Newport Banning Ranch Planned Community Development Plan, either the Applicant or the City would file a pre-application with Orange County LAFCO pursuant to Government Code Section 56000 et seq. (Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000) for annexation of approximately 361 acres of the Project site to the City. The pre-application would be submitted pursuant to the terms of the Pre-Annexation and Development Agreement agreed to by the City and the Applicant

and as approved by the City and would be consistent with the approved pre-zoning approved by the City for the Project site and the City's General Plan. As part of the annexation pre-application, the City would submit a plan for providing public services to include the type, level, range, timing, and financing of services to be extended to the Project site including requirements for infrastructure or other public facilities.

All public services and facilities would be provided to the Project by the City. The Project site is not currently within the City of Newport Beach service area. As part of the annexation process a change to the organization of the City of Newport Beach retail water agency boundary will be proposed to expand this boundary to incorporate the Project site to provide water service to the Project. The Project site is not within the Costa Mesa Sanitary District boundaries or the boundaries of the City's sewer service. As part of the annexation process, a change to the organization of the City of Newport Beach sewer service boundaries would be proposed to expand this boundary to incorporate the Project site to provide sewer service for the proposed Project. No other changes of organization affecting any public agencies in the Project area would result from the development of the proposed Project or annexation of the 361 acres of the Project site within the Newport Beach Sphere of Influence to the City of Newport Beach.

#### **Response 5**

Please refer to the responses to Comments 3 and 4. Service by the Mesa Consolidated Water District and/or the Costa Mesa Sanitary District is not proposed because the City of Newport Beach can adequately serve the Project.

#### **Response 6**

Although the Applicant's Project Objectives do not specifically include the annexation of the property into the City, the Project Description indicates that this action is proposed as a part of the Project. To further articulate, the following Project Objective is provided and is incorporated into the Final EIR as follows:

17. Provide for annexation to the City of Newport Beach those portions of the Project site within the City's Sphere of Influence following approval by the City and the California Coastal Commission of the Project through the submittal of an application for annexation to the Local Agency Formation Commission of Orange County (LAFCO).

#### **Response 7**

Section 3.7 of the Project Description has been revised and is incorporated into the Final EIR as follows:

Development implementation is designed to ensure efficient use of soil movement to balance landform grading and bluff/slope restoration and to make efficient use of existing infrastructure locations and connection points within and adjacent to the Project site. Development would be tied to corresponding requirements for public parks and Upland and Lowland habitat dedication and restoration, and would have functioning infrastructure.

Following the final approval of the Project by the City and the Coastal Commission, and following consolidation of oil production wells into the OF land use district as describe in the Newport Banning Ranch Planned Community Development Plan, either the Applicant or the City would file a pre-application with Orange County LAFCO requesting approval of the annexation of the 361 acre portion of the Project site located in the City's Sphere of Influence to the City of Newport Beach. The annexation pre-application would be consistent with the terms of the Pre-Annexation and Development Agreement between the City and the Applicant approved by the City, with the approved pre-zoning approved by the City for the Project site and with the City's General Plan. Following approval or conditional approval of the annexation application, the entire 361 acres within the Newport Beach Sphere of Influence would be annexed to the City in one phase. Following completion of annexation proceedings, Project implementation may commence according to the following plan (Table 3-3).

### **Response 8**

Section 3.9 of the Project Description identifies components of the Project that would be considered by the City of Newport Beach, as lead agency. Actions required by responsible agencies are identified in Section 3.14 of the Project Description. Please also refer to the response to Comment 4.

### **Response 9**

The comment does not raise environmental issues. The final Pre-Annexation and Development Agreement between the City and the Applicant establishes terms for payment of impact fees and other financial obligations for the Project. As such, no physical environmental impacts are associated with the Pre-Annexation and Development Agreement.

### **Response 10**

The comment is noted. Please refer to the response to Comment 2.

### **Response 11**

The City concurs that Government Code Section 56668 addresses LAFCO applications rather than CEQA documents. Government Code Section 56668 notes that factors to be considered in the review of a proposal with respect to services would include but not be limited to:

“...The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas.... The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change. Timely availability of water supplies adequate for projected needs as specified in Section 65352.5”.

The Draft EIR evaluation has identified that governmental services, including water supply, can be adequately provided to serve the proposed Project. Please refer to Sections 4.14 and 4.15 of

the Draft EIR. The conclusions are consistent with the criteria for approval of annexation pursuant to Government Code Section 56668.

As a point of clarification, the following language is incorporated into the Final EIR as follows to page 4.14-12 of Section 4.14, Public Services and Facilities:

Therefore, following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City, the entire Project can be adequately served through the use of existing City of Newport Beach fire and emergency medical services as well use of fire and emergency medical services provided through the City's mutual aid agreement with adjacent jurisdictions, the latter as needed. The plan for provision of fire protection and emergency medical services to the Project site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable fire protection and emergency medical services to the Project. No significant impacts are anticipated.

As a point of clarification, the following language is incorporated into the Final EIR as follows to page 4.14-16 of Section 4.14, Public Services and Facilities:

The Police Department's operating budget is generated through tax revenues, penalties and service fees, and allowed government assistance. Facilities, personnel, and equipment expansion and acquisition are tied to the City budget process and tax-base expansion. Tax-base expansion from development of the proposed Project would generate funding for the police protection services. Implementation of SCs 4.14-4 and 4.14-5 related to site security and building and site safety design recommendations would ensure adequate police protection services can be provided to the Project site following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City. The plan for provision of police services to the Project Site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable police protection services to the Project. Therefore, the Project's impact on police protection services would be less than significant.

As a point of clarification, the following language is incorporated into the Final EIR as follows to page 4.14-26 of Section 4.14, Public Services and Facilities:

The Library has also indicated that the Project would not create a need for new or expanded library facilities. As a result, there would be no significant physical impacts to library facilities resulting from the proposed Project following annexation of 361 acres of the Project site located in the Newport Beach Sphere of Influence to the City. As identified in SC 4.14-1, the Applicant shall pay the required Property Excise Tax to the City for public improvements and facilities associated with the City of Newport Beach Public Library. The plan for provision of police services to the Project Site meets the criteria for approval of the annexation pursuant to Government Code section 56668 as the City of Newport Beach can provide continuous and reliable library services to the Project.

## Response 12

All streets within the Project site are proposed to be public. The City can provide street sweeping service to the property. With respect to water, sewer, waste disposal, fire protection,

and emergency response, the proposed Project can be served by the City of Newport Beach. Please refer to Sections 4.14 and 4.15 of the Draft EIR.

### **Response 13**

This comment does not raise an environmental issue. The April 7, 2009 LAFCO response to the Notice of Preparation (NOP) did not request a comparison of the fire protection and emergency response to the Project area by the cities of Costa Mesa and Newport Beach. The LAFCO NOP comment letter states:

Fire Protection and Emergency Response Services: The project area is currently not within the boundary of an agency providing fire protection and emergency response service. The two agencies responding to emergency calls in the surrounding areas are the City of Newport Beach and the City of Costa Mesa. The Draft EIR should identify and evaluate plans for the extension and delivery of fire protection and emergency response services to the project area.

As a point of clarification, that portion of the Project site within the City is served by the City of Newport Beach Fire Department. The Project site encompasses approximately 401.1 acres. Approximately 40 acres of the Project site are located within the incorporated boundary of the City; the remainder of the Project site is located within unincorporated Orange County, in the City's adopted Sphere of Influence, as approved LAFCO. The development of the Project as proposed is consistent with the Alternative Use General Plan land use designation of Residential Village and has been assumed in the City's development assumptions for utility and service needs. Section 4.14.1, Fire Protection, of the Draft EIR identifies and evaluates a plan for the extension and delivery of fire protection and emergency response services to the entire Project area as provided by the City of Newport Beach. The plan for fire protection and emergency response services is consistent with the criteria for approval of the annexation pursuant to Government Code section 56668 as fire protection and emergency response service can be provided to the Project area on a continuous and reliable basis by the City of Newport Beach. The property is not within the City of Costa Mesa. Because the City of Newport Beach can adequately provide fire and emergency services to the Project, it is not the intent of Newport Beach to rely on adjacent jurisdictions including Costa Mesa to provide service to the site other than existing automatic aid agreements.

### **Response 14**

Page 4.15-27 has been revised and incorporated into the Final EIR as follows:

In addition to these on-site facilities, sanitary sewer facilities exist in the Project vicinity... The City of Newport Beach operates wastewater facilities adjacent to the Project site on West Coast Highway, along 19<sup>th</sup> Street, and on Ticonderoga Street.... The ~~City of Costa Mesa~~ Costa Mesa Sanitary District also has facilities near the Project site.

### **Response 15**

The comment is noted.

### **Response 16**

The first comment does not raise an environmental issue, however, the "Sewer and Water Infrastructure Master Facility Plan," referenced in the EIR will be corrected to include language



that as part of the annexation process the City of Newport Beach retail water agency boundary would be expanded to incorporate the Project site to provide water to the Project.

Mesa Consolidated Water District is not considered or evaluated as a possible provider of retail water service to the Project site because the City is best able to provide water service to the Project as described in the water service plan analyzed in the Draft EIR. The Applicant has agreed that the City should be the water service provider. The City has an existing main ground water supply pump station located proximate to the Project site which can facilitate expansion of water service by the City to serve the proposed Project.

## **Response 17**

This comment does not raise an environmental issue. The April 7, 2009 LAFCO response to the NOP did not include a request that the EIR include a discussion of the relative merits of the local agencies capable of providing water, sewer, and solid waste disposal service to the area as represented in the November 4, 2011 LAFCO comment letter on the Draft EIR. The LAFCO NOP comment letter states:

The Public Services and facilities discussion should also include a discussion of the ability of the City to provide services (Govt. Code Section 56668(j)). These services are discussed in detail below.

Water: The project area is currently not within the boundary of an agency that provides retail water services. The two agencies providing retail water services to surrounding areas are the City of Newport Beach and Mesa Consolidated Water District. The Draft EIR should identify and evaluate plans for the extension and delivery of retail water services to the project area.

Sewer: The project area is currently not within the boundary of an agency that provides local sewer services. The two agencies providing local retail sewer services to surrounding areas are the City of Newport Beach and the Costa Mesa Sanitation District. The Draft EIR should identify and evaluate plans for the extension and delivery of local retail sewer services to the project area. The Draft EIR should also evaluate the connection of local retail sewer services for the project to regional sewer facilities provided by the Orange County Sanitation District.

Waste Disposal: The project area is currently not within the boundary of an agency providing solid waste disposal services. The two agencies providing solid waste disposal services in the area are the Costa Mesa Sanitation District and the City of Newport Beach. The Draft EIR should identify and evaluate plans for the extension and delivery of solid waste disposal services to the project area.

The Draft EIR includes the following in response to LAFCO's NOP comments:

Section 4.15.1, Water Supply, identifies and evaluates the plan for the extension and delivery of retail water service to the Project site by the City of Newport Beach.

Section 4.15.2, Wastewater Facilities, identifies and evaluates the plan for extension and delivery of local retail sewer services to the Project site by the City and evaluates the connection of local retail sewer services for the Project to the regional Orange County Sanitation District Bitter Point Pump Station located near the Project site.

Section 4.14.5, Solid Waste, identifies and evaluates the plan for extension and delivery of solid waste disposal services to the Project site by the City of Newport Beach General Services Department Refuse Division.

### **Response 18**

The cost of service does not raise an environmental issue. The levels of service and rates to be paid by future recipients of water, sewer, and solid waste collection services would be established by each service provider at the time of recordation of final subdivision maps for the proposed Project.

### **Response 19**

Habitat restoration would be the responsibility of the Applicant in the areas identified in the Draft EIR and Habitat Restoration Program (HRP). Should the proposed Project be approved, the Open Space Preserve would be permanently restricted as open space. Further, the conditions of approval would detail the structure and funding of the ownership and maintenance of the open space. It is anticipated that either a conservancy would be formed or a qualified existing organization would be named as the land steward, and funding for long-term maintenance would be provided by a number of sources including endowments, Homeowners Association fees, property transfer taxes, and other to be determined funding sources, or some combination of all.

### **Response 20**

Please refer to the response to Comment 19.

### **Response 21**

Please refer to the response to Comment 19.

### **Response 22**

The entirety of the Project site is located within the City and its Sphere of Influence. The Draft EIR includes an analysis of a "No Project Alternative," which assumes the continued existing conditions on the Project site. In the event annexation of the 361 acres of the Project site located in the Newport Beach Sphere of Influence is not approved, the Project as proposed could not be implemented.

The proposed development of up to 1,375 residential units, 75,000 square feet of commercial uses, and a 75-room resort inn are allowable land uses under the City's General Plan Land Use Element. These uses could not be developed under the County of Orange's jurisdiction without applying for a General Plan Amendment to the County's General Plan. They would not result in reduced levels of service because prior to any development occurring on the Project site, the County would be required to consider the provision of public services to proposed development.



**Comment Letter R4a**

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November 2, 2011

Mr. Patrick J. Alford, Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
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**Subject:** Summarized Response Letter for the Draft Environmental Impact Report (EIR)  
(State Clearinghouse No. 2009031061) for the proposed Newport Banning  
Ranch Project

Dear Mr. Alford:

Mesa Consolidated Water District (Mesa Water) has reviewed the Draft Environmental Impact Report for the proposed Newport Banning Ranch project (SCH# 2009031061). We thank you for the opportunity to review the Draft EIR and appreciate your consideration of our comments as they relate to the proposed water supply for the project. We offer the following comments at this time and look forward to your response:

**PAUL E. SHOENBERGER, P.E.**  
General Manager

**COLEEN L. MONTELEONE**  
District Secretary

**VICTORIA L. BEATLEY**  
District Treasurer

**BOWIE, ARNESON,  
WILES & GIANNONE**  
Legal Counsel

**Project Description:**

We understand that the proposed project site consists of approximately 401 acres of land. Approximately 40 acres of the project site are located within the incorporated boundary of the City of Newport Beach, and approximately 361 acres are in unincorporated Orange County within the City's Sphere of Influence. The entire site is within the Coastal Zone, as established by the California Coastal Act.

As proposed, the project would involve the development of the approximately 401-acre site with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, a 75-room resort inn with ancillary resort uses, and approximately 51.4 gross acres for active and passive park uses including a 26.8-gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) would be retained in permanent open space. The project site's existing surface oil production activities located throughout the site would be consolidated into approximately 16.5 acres. The remaining surface oil production facilities would be abandoned/re-abandoned, remediated for development, and/or remediated and restored as natural open space.

As stated in the Draft EIR (see page 4.15-9), water service in the City of Newport Beach (City) is provided by three purveyors: the City, the Irvine Ranch Water District, and Mesa Water. The project site historically received water service from Mesa Water. The project site is located near the water service areas of the City and Mesa Water. Water supply and service for the Newport Banning Ranch project is proposed to be provided by the City (i.e., a LAFCO service reorganization will be required), which relies greatly on imported water.

1



Mr. Patrick J. Alford, Planning Manager  
October 31, 2011  
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District Secretary

**VICTORIA L. BEATLEY**  
District Treasurer

**BOWIE, ARNESON,  
WILES & GIANNONE**  
Legal Counsel

**General Comments:**

The following comments are provided based on our review of the information provided in the Draft EIR regarding the proposed water supply for the project and the associated environmental impacts with the use of imported water as currently proposed. The Draft EIR's analysis is currently inadequate as it does not consider a feasible alternative or mitigation measure (in fact completely ignores) in the form of the provision of water to the project through Mesa Water, which can provide the water supply to the project through 100% local water sources. The provision of local water to the proposed project via Mesa Water, as opposed to through imported water sources via the City as is proposed under the project, would reduce significant environmental impacts associated with the proposed project. Substantial revisions and recirculation of the Draft EIR is required to correct these deficiencies.

2

Use of imported water by the proposed project would create an unnecessary consumption of energy (see CEQA Guidelines Appendix F), which exacerbates the state and region's air quality emissions and production of greenhouse gas emissions, which in turn exacerbates global warming and associated environmental impacts. Additionally, provision of imported water would also continue to contribute to the general degradation of the Bay Delta area, in which southern California relies on imported water through the State Water Project.

3

**Conclusion:**

In conclusion, the Draft EIR is deficient in that it does not include in its analysis, the potential reduction of energy and other corresponding impact reductions associated with annexation into the Mesa Water for water service, which can serve the project with 100% groundwater resources. Use of local water supplies would: 1) reduce energy demand/consumption of the project (reference CEQA Guidelines Appendix F); 2) the reduced energy consumption would reduce state and region-wide air quality and greenhouse gas emissions; 3) reduction in GHG would reduce potential impacts associated with global warming; and, 4) local water supplies would reduce impacts to the Bay Delta associated with the use of imported water through the State Water Project. Recirculation of the Draft EIR is required in order to provide a thorough analysis of these issues as it relates to the provision of water to the project. This is clearly stated in CEQA Guideline 15088.5(a) which states:

4

*"A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification."*

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Mr. Patrick J. Alford, Planning Manager  
October 31, 2011  
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<p>Pursuant to CEQA Guideline 15088.5(a)(3), significant new information includes:</p> <p><i><b>"A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt it."</b></i></p>	4 cont.
<p>In order to reduce the Project's cumulatively considerable contribution to the global GHG inventory, and its significant and unavoidable GHG emissions impact, the following feasible mitigation should be included in the EIR (Section 4.11.8 Mitigation Program):</p> <p><b>MM 4.11.6</b> To reduce energy consumption and related greenhouse emissions, the City shall assure that domestic water service to the Project is provided to the greatest extent feasible from locally-produced groundwater sources rather than imported water supplies.</p>	5
<p>Mesa Water encourages you to consider inclusion in the EIR analysis Costa Mesa Sanitary District's annexation to the project area. Costa Mesa Sanitary District promotes zero waste strategies to comply with SB 1016 and innovative wastewater technologies and solutions to protect the environment.</p>	6

We thank you for the consideration of our comments and look forward to review of the Recirculated Draft EIR addressing these issues.

Sincerely,

Paul E. Shoenberger, P.E.  
General Manager

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**Letter R4a     Mesa Consolidated Water District**  
Paul E. Shoenberger, General Manager  
November 2, 2011

## **Response 1**

The comment is noted. As summarized in the Draft EIR from the Project's adopted Water Supply Assessment, the City's water supply consists of groundwater, recycled water, and imported water although recycled water is not available in the Project area. The City receives water from two main sources: (1) the Orange County Groundwater Basin (or the Lower Santa Ana River Groundwater Basin), which is managed by the Orange County Water District (OCWD), and (2) imported water from the Municipal Water District of Orange County. The OCWD manages local groundwater resources in the County. The City's groundwater supply is obtained from four wells: Dolphin Shallow Well, Dolphin Deep Well, Tamura Shallow Well, and Tamura Deep Well. These wells tap into the Orange County Groundwater Basin, also known as the Lower Santa Ana Basin, which is regulated by the OCWD. For 2009, the City's Basin Pumping Percentage (BPP) was set by OCWD at 62 percent (62 percent of the City's demand can be supplied by groundwater).

The BPP projections for fiscal year 2012-2013 from the OCWD were stated to be approximately 68 percent. As a result of the current groundwater basin levels and the expansion of the OCWD Ground Water Replenishment System, OCWD anticipates member agencies will see these projections higher than 68 percent in the coming years. In combination between the City's use of groundwater and recycled water, the statement that the City relies greatly on import water is not true.

## **Response 2**

With respect to the "provision of local water to the proposed project via Mesa Water", the Mesa Consolidated Water District website (accessed on December 13, 2011) states:

The District's water is a blend of local ground water and imported water from Northern California and the Colorado River. From Mesa Water's nine wells, groundwater is pumped from Orange County's groundwater basin which underlies north-central Orange County from Irvine to the Los Angeles County border and from Yorba Linda to the Pacific Ocean. It is replenished by water from the Santa Ana River and imported water purchased from the Metropolitan Water District of Southern California.

The Mesa Consolidated Water District's 2010 Urban Water Management Plan (also on the Water District's website) also identifies that the Water District's main sources of water are groundwater pumped from wells within the Orange County Basin and imported water from the Metropolitan Water District. Sources of imported water are identified as including the Colorado River and the State Water Project. These water sources are the same as those provided by the City of Newport Beach.

The Project is proposed to be served by the City of Newport Beach Municipal Operations Department. Approximately 40 acres of the Project site are currently in the City of Newport Beach and approximately 361 acres are located in unincorporated Orange County but within the City's Sphere of Influence. As noted in Section 2.2.3 of the City of Newport Beach's Draft 2010 Urban Water Management Plan (May 2011) "It is proposed that an annexation and boundary adjustment will be coordinated through the Local Agency Formation Commission to extend the

city limits to include portion of the project site currently within the sphere of influence and to extend the city's water service area to provide water to the entire project site".

Water supply is discussed in Section 4.15, Utilities, of the Draft EIR and the City of Newport Beach approved Water Supply Assessment is included in Appendix L of the Draft EIR. In addition to the above discussion, it is noted that the proposed development footprint is primarily located in the southeast corner of the site adjacent existing City of Newport Beach water infrastructure. Multiple points of connection into the City's water network would provide improved redundancy and water quality for the project with minimal off site construction impacts.

While the City appreciates that the Mesa Consolidated Water District may provide an alternative source of water, failure to consider the Water District as an alternative does not render the EIR deficient nor requires recirculation. Based upon the City's approved Water Supply Assessment, the Draft EIR determined that water supply impacts were not considered significant, and if water were supplied by Mesa Consolidated Water District, the significant impacts of the proposed Project would not be reduced to a level of less than significant.

### **Response 3**

Please refer to the response to Comment 2. The comments regarding the consumption of energy and impacts to the Bay Delta area resulting from importation of water is noted.

### **Response 4**

The comments of the Mesa Consolidated Water District regarding the reduction of impacts in the areas of energy demand, greenhouse gas emissions (GHG), and the Bay Delta are noted. Absent more specific quantification, the comments of the Water District provide only their qualitative opinion as to the reduction in impacts and are not supported by substantial evidence. The Draft EIR determined that water supply impacts were less than significant with the City of Newport Beach as the water purveyor. The impacts of importing water were considered by the Metropolitan Water District as part of its overall water management program. Absent further information it is only speculative, but not demonstrated that the provision of water by Mesa Water would clearly lessen the significant environmental impacts of the project. Even if quantitative evidence were provided, the provision of water by Mesa Consolidated Water District would still require some degree of energy consumption to develop and deliver water to the Project which would result in air and GHG emissions, and would only incrementally reduce, but may not clearly lessen the significant environmental impacts of the project. Air emissions and impacts of global climate change would still remain significant and unavoidable impacts.

### **Response 5**

The original GHG estimate assumed all water would be imported (i.e., no groundwater). If the Project uses 10 percent groundwater, GHG emissions attributable to water use would be reduced by approximately 6.5 percent. More groundwater uses would increase GHG reductions proportionately. (This assumes that half of the groundwater is for indoor use and becomes wastewater and half of the groundwater is for outdoor use and is not treated after use.) A 10 percent use of groundwater would reduce overall GHG emissions by approximately 0.2 percent; a 50 percent use of groundwater would reduce GHG emissions by about 1.1 percent. The City continues to pursue opportunities to use local sources.

### **Response 6**

The comments are noted.





Comment Letter R4b

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November 7, 2011

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City of Newport Beach, Community Development Department  
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Subject: Draft Environmental Impact Report (EIR) (State Clearinghouse No. 2009031061)  
for the proposed Newport Banning Ranch Project

Dear Mr. Alford:

Mesa Consolidated Water District (Mesa Water) has reviewed the Draft Environmental Impact Report (Draft EIR) for the proposed Newport Banning Ranch project (SCH# 2009031061). We thank you for the opportunity to review the Draft EIR and appreciate your consideration of our comments as they relate to the proposed water supply for the project. We offer the following comments at this time and look forward to your response:

**PAUL E. SHOENBERGER, P.E.**  
General Manager

**COLEEN L. MONTELEONE**  
District Secretary

**VICTORIA L. BEATLEY**  
District Treasurer

**BOWIE, ARNESON,  
WILES & GIANNONE**  
Legal Counsel

**Project Description:**

We understand that the proposed project site consists of approximately 401 acres of land. Approximately 40 acres of the project site are located within the incorporated boundary of the City of Newport Beach, and approximately 361 acres are in unincorporated Orange County within the City's Sphere of Influence. The entire site is within the Coastal Zone, as established by the California Coastal Act.

As proposed, the project would involve the development of the approximately 401 acre site with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, a 75-room resort inn with ancillary resort uses, and approximately 51.4 gross acres for active and passive park uses including a 26.8 gross acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) would be retained in permanent open space. The project site's existing surface oil production activities located throughout the site would be consolidated into approximately 16.5 acres. The remaining surface oil production facilities would be abandoned/re-abandoned, remediated for development, and/or remediated and restored as natural open space.

As stated in the Draft EIR (see page 4.15-9), water service in the City of Newport Beach (City) is provided by three purveyors: the City, the Irvine Ranch Water District, and Mesa Water. The project site historically received water service from Mesa Water. The project site is located adjacent to the water service areas of the City and Mesa Water. Water supply and service for the Newport Banning Ranch project is proposed to be provided by the City (i.e., a LAFCO service reorganization will be required), which relies greatly on imported water.

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Mr. Patrick J. Alford, Planning Manager  
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**BOWIE, ARNESON,  
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Legal Counsel

**General Comments:**

The following comments are provided based on our review of the information provided in the Draft EIR regarding the proposed water supply for the project and the associated environmental impacts with the use of imported water as currently proposed. The Draft EIR's analysis is currently inadequate as it does not consider an appropriate range of feasible alternatives or mitigation measure (in fact completely ignores) in the form of the provision of water to the project through Mesa Water, which can provide the water supply to the project through 100% local water sources. The provision of local water to the proposed project via Mesa Water, as opposed to through imported water sources via the City as is proposed under the project, would reduce significant environmental impacts associated with the proposed project. Substantial revisions and recirculation of the Draft EIR is required to correct these deficiencies.

2

Use of imported water by the proposed project would create an unnecessary consumption of energy (see CEQA Guidelines Appendix F), which exacerbates the state and region's air quality emissions and production of greenhouse gas emissions, which in turn exacerbates global climate change and associated environmental impacts. Additionally, provision of imported water would also continue to contribute to the general degradation of the Bay Delta area, in which southern California relies on imported water through the State Water Project.

3

**Specific Comments:**

**1. The Draft EIR Fails to Consider a Reasonable Range of Alternatives**

CEQA Guidelines Section 15126.6(c) states that:

*The range of the potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.*

The EIR identifies significant and unavoidable impacts associated with greenhouse gas emissions and air quality. As the City's water supply is heavily reliant on imported water, the use of the City's water to provide domestic water service to the site would result in an unnecessary consumption of energy, the production of which results in state and regional air quality emissions and greenhouse gas emissions. As Mesa Water relies solely on local groundwater sources (as discussed below), the use of Mesa Water service would result in an incremental reduction in the severity of the significant and unavoidable impacts related to air quality and greenhouse gas emissions. Additionally, an alternative that would include the use of Mesa Water in lieu of the City's water service would not conflict with any of the stated project objectives. Finally, because existing Mesa Water distribution facilities are located adjacent to the project site, the use of Mesa Water service at the project site would be feasible. Therefore, the Draft EIR was deficient as it failed to include an alternative that would have considered the use of Mesa Water, which would have been a feasible alternative that would not have conflicted with the project objectives.

4

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Mr. Patrick J. Alford, Planning Manager  
November 7, 2011  
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**2. Use of Imported Water versus Local Water is an Inefficient and Unnecessary Consumption of Energy**

The Draft EIR identifies significant and unavoidable impacts associated with air quality and greenhouse gas emissions. A comparison of energy demands associated with the provisions of water to the proposed project via the City (imported water) versus Mesa Water (local water) has been conducted and is summarized below. This comparison demonstrates that provision of water to the project through the City would result in an inefficient and unnecessary consumption of energy. This is inconsistent with CEQA Guideline 15126.4(a)(1) which states:

**An EIR shall describe feasible measures which would minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.**

The Draft EIR is deficient as it does not identify feasible mitigation measures which would minimize the significant air quality and greenhouse gas emissions impacts that were identified. There is no analysis of alternative water sources for the proposed project, which is one of the most important issues facing Southern California today. As demonstrated in Attachment A, provision of water to the project site by Mesa Water can be accomplished in a more energy efficient manner than is currently proposed, and the Draft EIR does not identify this as a mitigation measure for air quality and greenhouse gas emissions impacts. In fact, calculations of energy consumption at Mesa Water for groundwater extraction with colored water treatment of some of that groundwater show energy consumption values that are significantly lower than using imported water as a portion of the water supply. See Table 1:

**Table 1: Energy Intensities of Different Water Supplies (Mesa Water, 2011)**

Supply	Percent	Total kWh/af	Notes
Imported State Water Project	62%	3,000	5 and 10 year averages for imported water supplies in Metropolitan Water District 2010 Regional Urban Water Management Plan (RUWMP).
Imported Colorado River Aqueduct	38%	2,000	5 and 10 year averages for imported water supplies in Metropolitan Water District 2010 Regional Urban Water Management Plan (RUWMP).
MWD Treatment Imported Water	100%	490	
Imported Weighted Average		3,105	Includes treatment energy
Groundwater	100%	650	Energy to pump

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**Table 1: Energy Intensities of Different Water Supplies (Mesa Water, 2011)**

Supply		Percent	Total kWh/af	Notes
Current CWTF Treated Groundwater			1,550	Energy to treat the colored water that is pumped. Not included in clear water.
Future CWTF Treated Groundwater		38%	1,100	Upgraded system to start up in 2012
<b>Groundwater Replenishment Activities by OCWD</b>				
2012-2014	Santa Ana River Diversions	60.7%	50	
	Future imported water purchases	10.1%	3,105	
	Groundwater Replenishment System Operation	29.1%	1,441	
	Total Groundwater Weighted Average		1,542	Pumping + CWTF (38%) + replenishment (62%)
2015-2020	Santa Ana River Diversions	54.5%	50	
	Future imported water purchases	9.1%	3,105	
	Groundwater Replenishment System Operation	36.4%	1,441	
	Total Groundwater Weighted Average		1,585	Pumping + CWTF (38%) + replenishment (62%)
2020-onward	Santa Ana River Diversions	50.8%	50	
	Future imported water purchases	8.5%	3,105	
	Groundwater Replenishment System Operation	40.7%	1,441	
	Total Groundwater Weighted Average		1,610	Pumping + CWTF (38%) + replenishment (62%)

5 cont.





Mr. Patrick J. Alford, Planning Manager  
November 7, 2011  
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**3. Reduction in Energy Consumption Will Reduce Regional Air Emissions, Including Greenhouse Gas Emissions**

The reduction in energy consumption that can be accomplished through the continued provision of water by Mesa Water will result in reduction in energy consumption that will have a corresponding reduction in the generation of air emissions, including greenhouse gas emissions, which are significant when considering the long-term provision of water to the project. When considering the additional 613.5 acre feet per year of water demand projected for the Newport Banning Ranch development and the projected GHG production of approximately 0.24 metric tons CO2 per acre foot of water delivered from Mesa Water using entirely groundwater resources, the total GHG production to service the Newport Banning Ranch from Mesa Water is projected to be approximately 147.7 metric tons CO2 per year. This reduction in greenhouse gas emissions would help meet the State's overall greenhouse gas emission reduction goals mandated by the State and is consistent with the provisions of CEQA Guideline 15126.4(a) which states:

*Consistent with section 15126.4(a), lead agencies shall consider feasible means, supported by substantial evidence and subject to monitoring or reporting, of mitigating the significant effects of greenhouse emissions. Measures to mitigate the significant effects of greenhouse gas emissions may include, among others:*

*(2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F*

Again, the Draft EIR is deficient with respect to this section of the CEQA Guidelines as it does not analyze the potential greenhouse gas emissions reductions associated with provision of water to the project by Mesa Water. Provision of local water sources to supply the project is feasible and can readily be provided by Mesa Water. Utilizing local water sources would result in an incremental reduction in the significant effects of greenhouse gas emissions by reducing the energy demands as compared to provision of imported water to serve the project. However, there is no analysis of this feasible measure in the Draft EIR, and therefore, the Draft EIR is inadequate with respect to this provision of the CEQA Guidelines.

**4. Use of Imported Water Will Continue to Contribute to Impacts to the Bay Delta Ecosystem**

The Draft EIR is deficient as it fails to include an alternative or mitigation measure that would utilize Mesa Water service for the project site in order to reduce, indirectly, the impacts to the Bay Delta that occur with imported water supplied through the State Water Project. The impacts on the Bay Delta by using imported water are well known and are identified in the Draft EIR (e.g., see EIR page 4.15-5).

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Mr. Patrick J. Alford, Planning Manager  
November 7, 2011  
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Impacts on the Bay Delta associated with the use of imported water, which would be completely avoided by the use of local water supplies, are extensive. High profile species impacted by the State Water Project include the delta smelt, anadromous salmonids, and giant garter snake; however, many species are impacted by activities within the Bay Delta associated with the State Water Project.

Large numbers of delta smelt are lost to entrainment in the Central Valley Project (CVP) and State Water Project (SWP) water export facilities. In addition, the CVP and SWP water export facilities and other diversions export phytoplankton, zooplankton, nutrients, and organic material that would otherwise support the base of the food web in the Delta, thus reducing food availability for delta smelt. The risk of entrainment to delta smelt varies seasonally and among years. The greatest entrainment risk has been hypothesized to occur during winter when pre-spawning adults migrate into the Delta in preparation for spawning. (Moyle, 2002; USBR, 2004).

Access to most of the historical upstream spawning habitat for Chinook salmon and steelhead trout has been eliminated or degraded by manmade structures (e.g., dams and weirs) associated with water storage, conveyance, flood control, and diversions and exports for municipal, industrial, agricultural, and hydropower purposes. Upstream diversions and dams have decreased downstream flows and altered the seasonal hydrological patterns. Reduced flows from dams and upstream water diversions result in spawning delays, increased straying, and increased mortality of out-migrating juveniles. (Yoshiyama et al., 1998; DWR, 2005).

Provision of local water by Mesa Water should be considered a feasible alternative or mitigation measure to the proposed project. However, the Draft EIR did not consider this measure or alternative, which is inconsistent with the primary purpose of CEQA.

7 cont.

**5. The Draft EIR Fails to Identify Conflicts with City of Newport Beach General Plan and California Coastal Commission Policies**

Table 4.11-7 of the Draft EIR provides a consistency analysis for the project with certain City and State policies. The Draft EIR fails to identify that the project's use of the City's imported water would conflict with a policy of the California Coastal Commission and the City's General Plan. Page 4.11-33 of the Draft EIR states that a Coastal Act Policy includes that new developments shall "minimize energy consumption..." The corresponding consistency analysis does not consider the unnecessary and inefficient consumption of energy that would occur associated with the use of the City's imported water instead of Mesa Water's locally produced water. Additionally, Page 4.11-28 of the Draft EIR identifies LU Policy 6.4.10 of the City of Newport Beach General Plan Land Use Element that would:

8

***Require that any development of Banning Ranch achieve high levels of environmental sustainability that reduce pollution and consumption of energy, water, and natural resources to be accomplished through . . . infrastructure design and other techniques.***

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Mr. Patrick J. Alford, Planning Manager  
November 7, 2011  
Page 7 of 9

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Again, the corresponding analysis does not identify the potential use of Mesa Water service in order to reduce the consumption of energy that would occur in association with utilizing imported water from the City's water supply. The failure to identify these potential conflicts with policies analyzed in the Draft EIR resulted in a deficiency in the analysis of greenhouse gas emissions.

8 cont.

**6. The City Cannot Make the Findings Pursuant to CEQA Section 21081(3)(a) that are Necessary in Order to Approve the Project**

Pursuant to CEQA 21081(3) (a), the City must be able to make certain findings with respect to the significant impacts, mitigation measures, and alternatives to the proposed project before being able to approve the project. Specifically, the City must be able to make the following finding with respect to the provision of water by the City, as proposed, instead of by Mesa Water:

***"Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report." Furthermore, as stated in 21081.5 "In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on substantial evidence in the record."***

***Section 15021(a) (2) "A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment."***

***Section 15021(b) "In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors."***

9

The provision of local water to serve the project is a feasible alternative that would substantially lessen the significant effects of the proposed project on the environment. The City cannot reject this environmentally superior alternative/mitigation measure because it will not be able to find that provision of water to the project site is infeasible for economic, legal, social, or technological considerations. Regarding the required findings that are identified above:

**Economic.** The economic cost of provision of local water to the project by Mesa Water would be no greater than would be by the City.





Mr. Patrick J. Alford, Planning Manager  
November 7, 2011  
Page 8 of 9

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**Legal.** There are no legal barriers to the provision of water by Mesa Water. Similar to the proposed project, annexation of service would be required through LAFCO.

**Social.** There are no social effects associated with Mesa Water providing water supply/service to the project.

**Technological.** Mesa Water has the ability to serve the project site without any additional technological considerations as compared to the City providing such service.

In the Orange County Local Agency Formation Commission (LAFCO) letter dated April 7, 2009, in which LAFCO commented on the Notice of Preparation (NOP), LAFCO stated that:

*"..Project Description" should adequately address all other related changes of organization affecting any public agencies in the project area that may result from the development of the proposed planned communities and annexation to the City of Newport Beach. These should include, but are not limited to the discussion of the concurrent annexation of the area to the Mesa Water and/or the Costa Mesa Sanitary District."*

*"Water: The project area is currently not within the boundary of an agency that provides retail water services. The two agencies providing retail water services to surrounding areas are the City of Newport Beach and Mesa Water. The Draft EIR should identify and evaluate plans for the extension and delivery of retail water services to the project area."*

Thus LAFCO, the agency with responsibility of identifying utility district and municipal annexations "create planned, orderly and efficient patterns of development (Govt. Code §56668)" has identified Mesa Water as one agency that may be in a position to provide orderly and efficient service to the Banning Ranch Development.

**Conclusion:**

In conclusion, the Draft EIR is deficient in that it does not include an alternative or a mitigation measure that would have evaluated the potential reduction of energy and other corresponding impact reductions associated with annexation into the Mesa Water for water service, which can serve the project with 100% groundwater resources. Use of local water supplies would: 1) reduce energy demand/consumption of the project (reference CEQA Guidelines Appendix F); 2) the reduced energy consumption would reduce state and region-wide air quality and greenhouse gas emissions; 3) reduction in GHG would reduce potential significant impacts associated with global climate change identified in the Draft EIR; and, 4) local water supplies would reduce impacts to the Bay Delta associated with the use of imported water through the State Water Project. Recirculation of the Draft EIR is required in order to provide a thorough analysis of these issues as it relates to the provision of water to the project. This is clearly stated in CEQA Guideline 15088.5(a) which states:

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Mr. Patrick J. Alford, Planning Manager  
November 7, 2011  
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***"A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification."***

Pursuant to CEQA Guideline 15088.5(a) (3), significant new information includes:

***"A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt it.."***

In order to reduce the Project's cumulatively considerable contribution to the global GHG inventory, and its significant and unavoidable GHG emissions impact, the following feasible mitigation should be included in the EIR (Section 4.11.8 Mitigation Program):

**MM 4.11.6 To reduce energy consumption and related greenhouse emissions, the City shall assure that domestic water service to the Project is provided to the greatest extent feasible from locally-produced groundwater sources rather than imported water supplies.**

Mesa Water encourages you to consider inclusion in the EIR analysis Costa Mesa Sanitary District's annexation to the project area. Costa Mesa Sanitary District promotes zero waste strategies to comply with SB 1016 and innovative wastewater technologies and solutions to protect the environment.

We thank you for the consideration of our comments and look forward to review of the re-circulated Draft EIR addressing these issues.

Sincerely,

Paul E. Shoenberger, P.E.  
General Manager

Attachment A: Energy Consumption TM1

c: City of Costa Mesa  
Costa Mesa Sanitary District  
Orange County Local Agency Formation Commission

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**Letter R4b**     **Mesa Consolidated Water District**  
Paul E. Shoenberger, General Manager  
November 7, 2011

**Response 1**

Please refer to the response to Comment 1 in Letter R4a.

**Response 2**

Please refer to the response to Comment 2 in Letter R4a.

**Response 3**

Please refer to the response to Comment 2 in Letter R4a.

**Response 4**

The comments of the Mesa Consolidated Water District regarding the reduction of impacts in the areas of energy demand, greenhouse gas emissions (GHG), and the Bay Delta are noted. Absent more specific quantification, the comments of the Water District provide only their qualitative opinion as to the reduction in impacts and are not supported by substantial evidence. The Draft EIR determined that water supply impacts were less than significant with the City of Newport Beach as the water purveyor. The impacts of importing water were considered by the Metropolitan Water District as part of its overall water management program. Absent further information it is only speculative, but not demonstrated that the provision of water by Mesa Water would clearly lessen the significant environmental impacts of the project. Even if quantitative evidence were provided, the provision of water by Mesa Consolidated Water District would still require some degree of energy consumption to develop and deliver water to the Project which would result in air and GHG emissions, and would only incrementally reduce, but may not clearly lessen the significant environmental impacts of the project. Air emissions and impacts of global climate change would still remain significant and unavoidable impacts.

**Response 5**

Please refer to the response to Comment 5 in Letter R4a. The original GHG estimate assumed all water would be imported (i.e., no groundwater). If the Project uses 10 percent groundwater, GHG emissions attributable to water use would be reduced by approximately 6.5 percent. More groundwater uses would increase GHG reductions proportionately. (This assumes that half of the groundwater is for indoor use and becomes wastewater and half of the groundwater is for outdoor use and is not treated after use.) A 10 percent use of groundwater would reduce overall GHG emissions by approximately 0.2 percent; a 50 percent use of groundwater would reduce GHG emissions by about 1.1 percent.

**Response 6**

Please refer to the response to Comment 4 in Letter R4a.

**Response 7**

Please refer to the response to Comment 4.

## **Response 8**

Please refer to the response to Comment 4. The City of Newport Beach and Mesa Consolidated Water District both are members of the OCWD and thereby imported water comprises a portion of the total water supply of both agencies. The BPP for both agencies is the same. As stated in the Urban Water Management Plans of both the City of Newport Beach and Mesa Consolidated Water District, both agencies currently use imported water. The City did not evaluate the possibility of using Mesa Consolidated Water District groundwater because both agencies currently produce an equal amount of groundwater as a percentage of their overall water supply. Mesa Consolidated Water District states in its letter that the Project should consider the use of their groundwater as a measure to conserve energy. The source of this groundwater would be from a planned colored water treatment plan which Mesa Consolidated Water District is planning for in order to increase their groundwater supply in the future. To date it is unknown when this planned colored water treatment facility will be operational, and the quality of this future water is as yet undetermined, therefore the claim that the City should consider this future supply as a source of water to conserve energy is without merit.

## **Response 9**

Should the City be the water provider for the Banning Ranch development, the development and future customers would be required to comply with the City's current Water Conservation Ordinance and construction practices that reduce water consumption. The City's current Ordinances (Newport Beach Municipal Code 14.16 and 14.17) provide permanent restrictions to encourage water conservation and limit urban water runoff. These restrictions do not exist in the Mesa Consolidated Water District service area. For this reason, if the Project was served by Mesa Consolidated Water District more significant impacts to water quality and energy consumption could occur. Therefore, this alternative source of water would not result in an environmentally superior alternative.

## **Response 10**

Service by the Mesa Consolidated Water District is not proposed because the City of Newport Beach can adequately serve the Project. Please refer to Section 4.15, Utilities, of the Draft EIR.

## **Response 11**

The opinions of the Water District are noted.

## **Response 12**

Please refer to the response to Comment 5. As discussed earlier, the Project would not be served solely by imported water. The Project would receive a minimum of 68 percent from local supplies (according to OCWD current and future projections) which is currently the most any local water agency can supply. The City has identified the potential for additional local supplies in the Project's Water Supply Assessment and the City of Newport Beach 2010 Urban Water Management Plan.

Mesa Consolidated Water District states that their future supplies will reduce GHG. The Metropolitan Water District gets its water from both Northern California (Delta) and Colorado River. To quantitatively calculate the difference between GHG produced in the minimal amount of water, the City would use from Northern California (import) verses the GHG produced from future projects such as Mesa's colored water treatment project, a rather large local energy user is too speculative to include in the EIR.

## **Response 13**

The comment is noted.





## ***NEWPORT-MESA Unified School District***

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### **Comment Letter R5**

October 21, 2011

City of Newport Beach  
Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915  
Contact: Patrick Alford, Planning Manager  
(949) 644-3235  
[palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

RE: Newport Mesa Unified School District – Comments for the  
Draft Environmental Impact Report – Newport Banning Ranch Project  
State Clearinghouse No. 2009031061

Via: E-Mail: [palford@newportbeachca.gov](mailto:palford@newportbeachca.gov)

Dear Mr. Alford:

Newport Mesa Unified School District (NMUSD), respectfully submits comments for the Draft Environmental Impact Report, Newport Banning Ranch Project in the City of Newport Beach dated September 9, 2011.

#### Comment No. 1 –

The table of contents identifies 4.14-2 as NMUSD School Capacity and Enrollment for 2010-11. The correct table number is 4.14-3. Table 4.14.3 also includes available capacity. There is also Exhibit 4.14-3 that identifies a map of School District Boundaries and Schools.

1



4.13-3	City of Newport Beach General Plan Consistency Analysis.....	4.13-35																	
4.13-4	California Coastal Act Consistency Analysis.....	4.13-38																	
4.14-1	Newport Beach Fire Station Facilities .....	4.14-4																	
4.14-2	NMUSD School Capacity and Enrollment for 2010–2011 .....	4.14-20																	
4.14-3	Available Capacity at Existing Newport-Mesa Unified School District Schools Nearest to the Project Site.....	4.14-21	1 cont.																
4.14-4	Newport-Mesa Unified School District Student Generation Rates .....	4.14-22																	
4.14-5	Newport-Mesa Unified School District Dwelling Units and Students Yield .....	4.14-23																	
4.14-6	Existing Library Facilities Near the Project Site.....	4.14-25																	
4.14-7	Newport Banning Ranch Estimated Solid Waste Generation Without Waste Diversion .....	4.14-29																	
<div> <div>R:\Projects\Newport\J015\Draft EIR\TOC Draft-090711.doc</div> <div>X</div> <div>Newport Banning Ranch Draft Environmental Impact Report</div> </div>																			
<p><u>Comment No. 2</u> - Local Funding – 1<sup>st</sup> paragraph last sentence.</p> <p>The NMUSD pursues the opportunity for facilities funding whenever it is eligible in the State funding program. In June 2010 the District was awarded \$1,431,274 for modernization and new construction at Costa Mesa High School. However, due to the current state budget crisis, funding for the Costa Mesa High School projects has not been released. The total cost of the projects is \$7,456,294.64.</p>			2																
<p><u>Comment No. 3</u> - Local Funding – 2<sup>nd</sup> paragraph last sentence.</p> <p>Measure A funds were used by the School District to modernize every K-12 school campus throughout the district for ADA compliance, Fire Life Safety, Utility, Technology Upgrades and Interior/Exterior improvements. Measure A projects were completed in 2007.</p>			3																
<p><u>Comment No. 4</u> - Classroom Size – Last sentence.</p> <p>It is defined as the total number of classrooms with 20 students in classrooms grade Kindergarten through third grade and 33 students in classrooms grades fourth through twelfth.</p>			4																
<p><u>Comment No. 5</u> – TABLE 4.14-3 NEWPORT-MESA USD – SCHOOL CAPACITY AND ENROLLMENT FOR 2010-2011.</p> <p>Below is a corrected copy of Table 4.14-3. There is an estimated capacity surplus of approximately 2,036 seats for grades K-12 District-Wide.</p> <table border="1"> <thead> <tr> <th>School (Grade Level)</th><th>Net School Capacity<sup>a</sup></th><th>Enrollment<sup>b</sup></th><th>Available Capacity</th></tr> </thead> <tbody> <tr> <td>Elementary (K–6)</td><td>12,478</td><td>11,528</td><td>950</td></tr> <tr> <td>Secondary (7–12)</td><td>11,361</td><td>10,275</td><td>1,086</td></tr> <tr> <td><b>District Total</b></td><td><b>23,839</b></td><td><b>21,803</b></td><td><b>2,036</b></td></tr> </tbody> </table> <p><sup>a</sup> Zareczny 2010 <sup>b</sup> Zareczny 2010. Note: Ungraded elementary and secondary students are included into calculations.</p>			School (Grade Level)	Net School Capacity <sup>a</sup>	Enrollment <sup>b</sup>	Available Capacity	Elementary (K–6)	12,478	11,528	950	Secondary (7–12)	11,361	10,275	1,086	<b>District Total</b>	<b>23,839</b>	<b>21,803</b>	<b>2,036</b>	5
School (Grade Level)	Net School Capacity <sup>a</sup>	Enrollment <sup>b</sup>	Available Capacity																
Elementary (K–6)	12,478	11,528	950																
Secondary (7–12)	11,361	10,275	1,086																
<b>District Total</b>	<b>23,839</b>	<b>21,803</b>	<b>2,036</b>																

**Comment No. 6 - TABLE 4.14-4 AVAILABLE CAPACITY AT EXISTING NEWPORT-MESA UNIFIED SCHOOL DISTRICT – DISTRICT SCHOOLS NEAREST TO THE PROJECT SITE**

Below is the corrected Table 4.14-4.

School Name	Net School Capacity <sup>a</sup>	Enrollment <sup>b</sup>	Available Capacity	Distance to the Project Site (mi)
<b>Elementary Schools</b>				
Newport Elementary	445	429	16	2.2
Newport Heights Elementary	584	637	(50)	2.8
Pomona Elementary	485	518	(33)	2.6
Rea Elementary	577	445	132	2.8
Victoria Elementary	365	384	(19)	3.2
Whittier Elementary	804	799	5	2.4
<b>Middle Schools</b>				
Ensign Middle	1,228	1,079	149	2.0
<b>High School</b>				
Newport Harbor High	2,844	2,511	333	2.3
<i>Subtotal Elementary Schools</i>	<i>3,260</i>	<i>3,212</i>	<i>48</i>	<i>N/A</i>
<i>Subtotal Middle Schools</i>	<i>1,228</i>	<i>1,079</i>	<i>149</i>	<i>N/A</i>
<i>Subtotal High School</i>	<i>2,844</i>	<i>2,511</i>	<i>333</i>	<i>N/A</i>
<b>Total Capacity</b>	<b>7,332</b>	<b>6,802</b>	<b>434</b>	<b>N/A</b>
Note: The distances were taken from the crossing of West Coast Highway at Industrial Park Way in Newport Beach. <sup>a</sup> Zareczny 2010. <sup>b</sup> Zareczny 2010 (Ungraded elementary and secondary students are included into calculations). <sup>c</sup> Subtotals and totals may not add up due to rounding.				

6

Thank you for the opportunity to comment. Please feel free to contact me if you have any questions.

Sincerely,



Ara K. Zareczny  
Facilities Analyst

Newport-Mesa Unified School District  
2985 Bear Street, Building E  
Costa Mesa, CA 92626  
714.424.7522

Cc: Jeanette Justus  
otsiba@jeanettejustus.com

**Letter R5      Newport-Mesa Unified School District**  
Ara K. Zareczny, Facilities Analyst  
October 21, 2011

### Response 1

The Table of Contents has been revised and is incorporated into the Final EIR as follows:

4.14-23 NMUSD School Capacity and Enrollment for 2010–2011..... 4.14-20

### Response 2

The first paragraph under the heading “Local Funding” on page 4.14-8 has been revised and is incorporated into the Final EIR as follows:

In accordance with SB 50, the construction of new schools requires a school district to match State funds. The local match is typically provided by such funds as developer fees, local General Obligation bonds, and/or Mello-Roos CFD (“Special Taxes” that can be levied on property owners of newly constructed homes within a CFD). ~~The NMUSD participates in the State funding program and obtained funding for expansion of Sonora Elementary in Costa Mesa in 2008.<sup>13</sup>~~  
The NMUSD pursues the opportunity for facilities funding whenever it is eligible in the State funding program. In June 2010, the District was awarded \$1,431,274 for modernization and new construction at Costa Mesa High School.

### Response 3

The second paragraph under the heading “Local Funding” on page 4.14-8 has been revised and is incorporated into the Final EIR as follows:

In November 2005, residents within the boundaries of the NMUSD passed a local Measure F authorizing the sale of \$282 million in General Obligation bonds. In a resolution adopted by the School Board on June 13, 2006, the School District approved the tax rate of \$18.87 for every \$100,000 of assessed values for the repayment of the bonds. Measure F is the second successful General Obligation bond in the School District. Measure A was passed by the NMUSD voters in June 2000 and authorized the sale of \$110 million in General Obligation bonds. Measure A funds ~~are used by the School District to modernize every school campus throughout the district and to expand school capacity district-wide were~~  
used by the School District to modernize every K-12 school campus throughout the District for ADA compliance, Fire Life Safety, Utility, Technology Upgrades and Interior/Exterior improvements. Measure A projects were completed in 2007.

### Response 4

The last sentence under the heading “Classroom Size” on page 4.14-19 has been revised and is incorporated into the Final EIR as follows:

The State is also involved in deciding the structure of local schools. For example, in August 1996, the State Senate passed SB 1777 (1996–1997 Class Size

<sup>13</sup> ~~Although the application for funding of the Sonora Elementary School expansion was approved, funding has not been released due to the State budget crisis. However, due to the current state budget crisis, funding for the Costa Mesa High School Projects has not been released. The total cost of the projects is \$7,456,294.64.~~

Reduction Program) and SB 1789 (Class Size Reduction Facilities Funding Program). These programs together (1) provide incentive monies to local school districts to lower class sizes for kindergarten through the third grades (K–3) to a ratio of 20 students to 1 teacher and (2) provide funds for additional teaching stations. However, the loading factor that the State uses to calculate school building capacity is 25 students per elementary classroom (K–6) and 27 students per middle and high school classroom (grades 7–12) (OPSC 2008). The NMUSD implements Class Size Reduction policies in grades K–3. For the purposes of analyzing school impacts herein, NMUSD's Net Capacity is used. It is defined as the total number of classrooms with ~~25 students in each classroom; these classrooms do not include protected program classrooms (Zareczny 2009).~~<sup>14</sup> 20 students in classrooms grade Kindergarten through 3<sup>rd</sup> grade and 33 students in classrooms grades 4<sup>th</sup> through 12<sup>th</sup>.

## Response 5

Table 4.14-3 has been revised and is incorporated into the Final EIR as follows:

**TABLE 4.14-3  
NEWPORT-MESA UNIFIED SCHOOL DISTRICT  
SCHOOL CAPACITY AND ENROLLMENT FOR 2010–2011**

School (Grade Level)	Net School Capacity <sup>a</sup>	Enrollment <sup>b</sup>	Available Capacity
Elementary (K–6)	<del>42,112</del> <u>12,478</u>	11,528	<del>584</del> <u>950</u>
Secondary (7–12)	11,361	10,275	1,086
<b>District Total</b>	<b><del>23,473</del></b> <b><u>23,839</u></b>	<b>21,803</b>	<b><del>1,670</del></b> <b><u>2,036</u></b>
<sup>a</sup> Zareczny <del>2010</del> <u>2011</u> . <sup>b</sup> Zareczny <del>2010</del> <u>2011</u> . Note: Ungraded elementary and secondary students are included into calculations.			

## Response 6

Table 4.14-4 has been revised and is incorporated into the Final EIR as follows:

<sup>14</sup> Protected program classroom uses include special education, science labs, resource support programs, music, libraries, and computer labs.

**TABLE 4.14-4**  
**AVAILABLE CAPACITY AT EXISTING NEWPORT-MESA UNIFIED SCHOOL**  
**DISTRICT SCHOOLS NEAREST TO THE PROJECT SITE**

School Name	Net School Capacity <sup>a</sup>	Enrollment <sup>b</sup>	Available Capacity	Distance to the Project Site (mi)
<b>Elementary Schools</b>				
Newport Elementary	<del>437</del> <u>445</u>	429	<del>8</del> <u>16</u>	2.2
Newport Heights Elementary	<del>553</del> <u>584</u>	637	<del>(84)</del> <u>(50)</u>	2.8
Pomona Elementary	<del>483</del> <u>485</u>	518	<del>(35)</del> <u>(33)</u>	2.6
Rea Elementary	<del>530</del> <u>577</u>	445	<del>(85)</del> <u>132</u>	2.8
Victoria Elementary	<del>345</del> <u>365</u>	384	<del>(39)</del> <u>(19)</u>	3.2
Whittier Elementary	<del>806</del> <u>804</u>	799	<del>7</del> <u>5</u>	2.4
<b>Middle Schools</b>				
Ensign Middle	1,228	1,079	149	2.0
<b>High School</b>				
Newport Harbor High	2,844	2,511	333	2.3
<i>Subtotal Elementary Schools</i>	<del>3,154</del> <u>3,260</u>	3,212	<del>(58)</del> <u>48</u>	N/A
<i>Subtotal Middle Schools</i>	1,228	1,079	149	N/A
<i>Subtotal High School</i>	2,844	2,511	333	N/A
<b>Total Capacity</b>	<del>7,226</del> <u>7,332</u>	<b>6,802</b>	<del>424</del> <u>434</u>	<b>N/A</b>
Note: The distances were taken from the crossing of West Coast Highway at Industrial Park Way in Newport Beach.				
a. Zareczny <del>2010</del> <u>2011</u> .				
b. Zareczny <del>2010</del> <u>2011</u> (Ungraded elementary and secondary students are included into calculations).				



**Comment Letter R6**

**ORANGE COUNTY FIRE AUTHORITY**

P.O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Rd., Irvine, CA 92602

Keith Richter, Fire Chief

[www.ocfa.org](http://www.ocfa.org)

(714) 573-6000

September 22, 2011

City of Newport Beach  
3300 Newport Blvd  
Newport Beach, CA 92658

Attn: Patrick Alford, Planning Manager

RECEIVED BY  
COMMUNITY

SEP 28 2011

DEVELOPMENT  
CITY OF NEWPORT BEACH

SUBJECT: **Banning Ranch EIR**

Dear Mr. Alford:

Thank you for the opportunity to comment on the subject document. OCFA is currently the service provider to the area. Since this EIR is for annexation, it is difficult to respond to matters that normally would be of interest to OCFA. As such, the following comments are submitted:

<ul style="list-style-type: none"><li>• If development occurs after annexation, OCFA has no comment as the service provider becomes the City of Newport Beach.</li></ul>	1
<ul style="list-style-type: none"><li>• If development begins prior to annexation, OCFA will require an agreement between the City, County, and OCFA that addresses the transfer or retention of fire prevention, and planning &amp; development services. This agreement would address issues such as access, water, inspection, plan review and other areas addressing fire service response.</li></ul>	2
<ul style="list-style-type: none"><li>• If the project is not annexed immediately, OCFA will require several other mitigations such as Optical Preemption devices on traffic signals and access gates, Secured Fire Protection Agreement, and methane mitigation reports.</li></ul>	3

If you have any questions regarding this matter, I can be reached at 714-573-6199.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michele Hernandez".

Michele Hernandez  
Management Analyst, Strategic Services

Serving the Cities of: Aliso Viejo • Buena Park • Cypress • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest • La Palma • Los Alamitos • Mission Viejo • Placentia • Rancho Santa Margarita • San Clemente • San Juan Capistrano • Seal Beach • Stanton • Tustin • Villa Park • Westminster • Yorba Linda • and Unincorporated Areas of Orange County

**RESIDENTIAL SPRINKLERS AND SMOKE DETECTORS SAVE LIVES**



**Letter R6**      **Orange County Fire Authority**  
Michele Hernandez, Management Analyst  
September 22, 2011

**Response 1**

The comment is noted. It is acknowledged that if development occurs after annexation, that the fire service provider would become the City of Newport Beach. The Project anticipates that development would occur after the property is annexed to the City. However, even after Project implementation, it should be noted that the Orange County Fire Authority (OCFA) would retain some involvement for the Project. Specifically, it is anticipated that OCFA would continue to have oversight for the oil consolidation sites.

**Response 2**

The comment is noted. It is acknowledged that if development begins prior to annexation, OCFA would require an agreement between the City of Newport Beach, County of Orange, and OCFA that addresses the transfer or retention of fire prevention, and planning and development services. It is acknowledged that this agreement would address issues such as access, water, inspection, plan review and other areas addressing fire service response.

**Response 3**

The comment is noted. It is acknowledged that if the Project site is not annexed immediately, OCFA would require several other mitigations such as Optical Preemption devices on traffic signals and access gates, Secured Fire Protection Agreement, and methane mitigation reports.



## ORANGE COUNTY SANITATION DISTRICT

We protect public health and the environment by providing effective wastewater collection, treatment, and recycling.

### Comment Letter R7

November 7, 2011

Patrick J Alford, Planning Manager  
City of Newport Beach  
Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92658-8915



SUBJECT: Draft Environmental Impact Report for the Newport Banning Ranch Project

This letter is in response to the above-referenced Draft Environmental Impact Report (DEIR) for a project within the City of Newport Beach (City). The project site is located in the southwest portion of the City's sphere of influence adjacent to the Santa Ana River in unincorporated Orange County.

The Newport Banning Ranch Project (Project) would allow for the development of the approximately 401.1-acre site with 1,375 residential dwelling units (du); 75,000 square feet (sf) of commercial uses, a 75-room resort inn with ancillary resort uses, and approximately 51.4 gross acres for active and passive park uses including a 26.8 gross-acre public Community Park. Approximately 252.3 gross acres (approximately 63 percent) would be retained in permanent open space. The Project site's existing surface oil production activities located throughout the site would be consolidated into approximately 16.5 acres. The remaining surface oil production facilities would be abandoned/re-abandoned, remediated for development, and/or remediated and restored as natural open space. The proposed Project includes the development of a vehicular and a non-vehicular circulation system for automobiles, bicycles, and pedestrians, including a pedestrian and bicycle bridge from the Project site across West Coast Highway. The Project site is within the jurisdiction of the Orange County Sanitation District (OCSD).

The DEIR indicates the sewer service for the site will be provided by a new sewer that will connect to the OCSD Bitter Point Pump Station along Pacific Coast Highway. The DEIR indicates that the new sewer will traverse through open space area south and west of the development and connect directly to the Bitter Point Pump Station. The DEIR also indicates that the dry weather flow from the area will be 0.259 mgd.

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Santa Ana  
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Costa Mesa  
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Irvine Ranch  
Water District  
County of Orange



10844 Ellis Avenue • Fountain Valley, CA 92708-7018 • (714) 962-2411 • www.ocsd.com



Patrick Alford  
Page 2  
November 7, 2011

OCSD requests that the following items be clarified as part of the DEIR review process:

1) OCSD staff would like to review both the proposed sewers for the site and the existing sewers serving the existing oil field to ensure that OCSD has a clear understanding of the new sewer service connection(s) to serve the area.	1
2) The DEIR does not indicate who will own the new sewers being constructed under the Project. Please indicate the intended owners of the sewers. OCSD is the regional sewer service provider and will only allow new connections to a designated local retail agency that will be responsible for the upstream sewers.	2
3) OCSD staff suggests incorporating the trail system and public right-of-ways into the design for accessing and cleaning the new and existing sewers, proposed by the Project. The DEIR indicates that some of the new sewers will be in open space areas that could limit future access for maintenance.	3
4) The Project should include dedicated public right-of-way to allow OCSD to continue to have access to the Bitter Point Pump Station and related forcemain pipelines that are within the Project area. Exhibit 4.15-3 indicates that the existing access will be removed and replaced with open space. This includes the protection of existing OCSD easements for access and maintenance.	4
5) The Project includes a bridge across Pacific Coast Highway. OCSD also has facilities in Pacific Coast Highway. The project should include a discussion about protecting utilities in Pacific Coast Highway and include a figure for the proposed location with the location of the existing utilities.	5
6) OCSD currently operates dry-weather urban runoff facilities along the coast. Please indicate any requests to connect drainage systems to the sewer system in that area. The report should also indicate the estimated volume and water quality from the storm water system(s) discharging to the adjacent receiving water.	6
7) The DEIR indicates that 0.259 mgd will be needed for the Project. OCSD has recently completed testing of the Bitter Point Pump Station. The test results show that the station has a rated capacity of 39.43 mgd, and OCSD estimated that the total projected max peak inflow to the pump station for Year 2020 was 37.95 MGD. Thus, the pump station has sufficient capacity to serve the Project.	7





Patrick Alford  
Page 3  
November 7, 2011

<p>8) The DEIR indicates additional sewer flows may be tributary to the Bitter Point Pumping Station, see Section 4.15, Page 29 <i>An off-site connection would be required on 16th Street, adjacent to the Newport-Mesa Unified School District property. However, the connection would occur within an existing oil access road and would not result in significant environmental effects beyond those addressed as part of this EIR.</i> If additional flows will be directed or redirected to the Bitter Point Pump Station, this should be identified and quantified prior to a complete determination of the sewer capacity availability as indicated in item 6 above.</p>	8
<p>9) OCSD requests the landscaping for the Project area be designed to limit the views to OCSD Treatment Plant No. 2, west across the river and direct the views towards the ocean. There are lights and noises at night that are necessary to operate the treatment plant during normal and emergency operations.</p>	9
<p>10) OCSD requests that the Project include mitigation offsets for the future use of the Public Right of Way from the terminus of 19<sup>th</sup> Street to the Santa Ana River. The County of Orange shows this as a future road and OCSD would also like to consider this alignment for a future sewer.</p>	10
<p>11) OCSD requests that baseline odor studies are done at the site to determine the levels and types of odors that are naturally generated at the site. The site has several potentially odorous sources that can be confused with the adjacent treatment plant and sewerage pumping station. This baseline data will be used by OCSD to determine the nature of any future odor complaints from residents and businesses within the Project area. The baseline data analysis should then be included in any final environmental documents as part of the environmental setting. OCSD staff is available for consultation of how to perform these studies.</p>	11
<p>12) Also, please note that any construction dewatering operations that involve discharges to the local or regional sanitary sewer system must be permitted by OCSD prior to discharges. OCSD staff will need to review/approve the water quality of any discharges and the measures necessary to eliminate materials like sands, silts, and other regulated compounds prior to discharge to the sanitary sewer system.</p>	12



Patrick Alford  
Page 4  
November 7, 2011

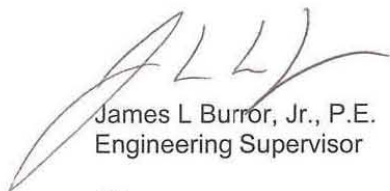
13) Section 4.15, Page 27, should be updated to 104 mgd for reclamation. "The OCSD also provides up to ~~40~~ 104 mgd of treated wastewater to the OCWD for further processing for landscape irrigation and injection into the groundwater seawater intrusion barrier."

13

14) Finally, OCSD is currently investigating a sewer deficiency in the OCSD sewer system in Fairview Boulevard in the City of Costa Mesa. The current efforts include investigating alternative alignments within the Project area. A potentially new sewer would redirect flows from southwest Costa Mesa and an area of Newport that is adjacent to the Project site, to relieve the trunk sewers in Fairview Boulevard. OCSD continues to work with the City of Newport Beach and Costa Mesa Sanitary District on this effort because it will allow them to abandon a number of sewage pumping stations. OCSD staff recommends that any alignments being considered in the Banning Ranch Project area continue to be closely coordinated between the three agencies and within the Departments within those agencies.

14

Thank you for the opportunity to comment on the proposed development. If you have any questions regarding sewer connection fees, please contact Wendy Smith at (714) 593-7880. For planning issues regarding this project, please contact me at (714) 593-7335.



James L. Burror, Jr., P.E.  
Engineering Supervisor

JB:sa  
EDMS:003948931/1.12a

**Letter R7**      **Orange County Sanitation District**  
James L. Burror, Jr., Engineering Supervisor  
November 7, 2011

**Response 1**

The proposed sewer facilities and the existing sewer facilities are depicted on Exhibit 4.15-3 of the Draft EIR. They are also shown on Figure 4 and Figure 3, respectively, of the Sewer and Water Facilities Plan included in Appendix L of the Draft EIR.

**Response 2**

The intended owner of the new sewer system would be the City of Newport Beach as referenced in Section 2.2 of the Sewer and Water Facilities Plan.

**Response 3**

The comment is noted. Based on the proposed layout depicted in Exhibit 4.15-3 of the Draft EIR, the sewer alignments that are not proposed within the street system are aligned with proposed trails or maintenance roads.

**Response 4**

A public right-of-way is generally conveyed when a public street or highway is being dedicated. The area in question would not be a public highway or street and therefore a dedication public right-of-way is not proposed. The current OCSD easement rights would assure OCSD of their rights to access and maintenance. Exhibit 4.15-3 is a graphical representation of the proposed wastewater facilities and was not intended to indicate that the existing access would be removed and replaced with open space. Exhibit 4.15-3 has been revised and incorporated into the Final EIR to incorporate the force main pipeline alignments. The revised exhibit follows the OCSD responses.

**Response 5**

The existing OCSD facilities in the vicinity of the proposed pedestrian and bicycle bridge are within the West Coast Highway right-of-way. Any subsurface work proposed for the construction of the bridge would be outside of the public right-of-way. Please refer to Exhibits 3-14 and Exhibit 4.2-4 in the Draft EIR for a proposed layout of the pedestrian bridge and a photo simulation of the pedestrian bridge, respectively.

**Response 6**

No dry weather diversions are proposed as part of the Project.

**Response 7**

The adequate capacity of the Bitter Point Pump Station is noted.

**Response 8**

The proposed wastewater pipeline system includes providing a sewer stub to the vacant Newport-Mesa Unified School District property. Development of the School District property is not a part of the proposed Project and is therefore not included in the EIR analyses. For



OCSD's reference, the approximately 11-acre site has a City of Newport Beach General Plan land use designation of Public Facilities. Using OCSD's unit flow rate of 2715 (gpd/ac) for institutional use, the sewer generator is estimated at 0.030 mgd.

Page 4.15-29 has been revised and is incorporated into the Final EIR as follows:

Effluent from the development areas would be collected and directed to the OCSD trunk sewer upstream of the Bitter Point Pump Station via 8-, 10- and 12-inch pipes. The majority of the proposed wastewater pipelines would be constructed within the Project site and would occur within the identified development footprint evaluated throughout this EIR. An off-site ~~connection would be required on sewer stub is proposed near 16<sup>th</sup> Street to provide future service to the~~ adjacent to the Newport-Mesa Unified School District property. However, the ~~connection proposed sewer stub~~ would occur within the proposed off-site road and grading footprint evaluated throughout this EIR, an existing oil access road and would not result in significant environmental effects beyond those addressed as part of this EIR. Therefore, no additional direct impacts related to construction and operation of the on-site wastewater system would occur.

## Response 9

The City acknowledges that the OCSD Treatment Plant No. 2 operates on a continuous basis and residents of and visitors to the Project site would be able to see the treatment plant which is located west of the Santa Ana River during the daytime and lights from the treatment plant at night. Landscape on the Project site will be subject to a variety of regulations, serve a variety of purposes, and have only a limited ability to reduce the visual appearance of the treatment plant's operations. Consistent with the findings of *South Orange County Wastewater Authority v. City of Dana Point*, Cal.App. 4 Dist., June 30, 2011), it is the not responsibility of the City of Newport Beach or the Applicant to provide on-site landscaping to block views of the existing treatment plant nor is there an expectation of the City that the OCSD should be responsible for preventing views of its facilities from the Project site.

## Response 10

Mitigation offsets for future use of the public right-of-way from the terminus of 19<sup>th</sup> Street to the Santa Ana River are not a part of the proposed Project. The City of Newport Beach is requiring the Project to dedicate a strip of land 52 feet wide along the Project's northern property line for future 19<sup>th</sup> Street as shown on Tentative Tract Map No. 17308.

## Response 11

According to SCAQMD's Facility Information Detail (FIND) data base, there were two odor complaints for the West Newport Oil Company, one in 1999 and one in 2000. Therefore, there is no record of odor complaints for more than ten years. All tanks and producing equipment are closed systems. Open pits and sumps were discontinued by the 1980s. The potential for future odor impacts is considered to be very low. However, a mitigation measure has been incorporated into the Final EIR that requires Homeowners Associations to advise residents that odor complaints may be made to the City and to SCAQMD. Complaints to the City would be addressed in a timely manner. The following mitigation measure is proposed and incorporated into the Final EIR as follows:

**MM 4.10-13 Odor Complaints.** The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.

## **Response 12**

The comment is noted. Dewatering operations are not anticipated for the Project. Should groundwater be encountered and require dewatering, the Project would apply for coverage and adhere to the monitoring and reporting program under Order No. R8-2009-0003. Any dewatering of storm water from excavated areas would be conducted in accordance with the General Construction Permit (Order 2009-0009-DWQ) and the North Orange County MS4 Permit (Order No. 2009-0030). Any discharges to sanitary sewer would be by OCSD prior to discharges.

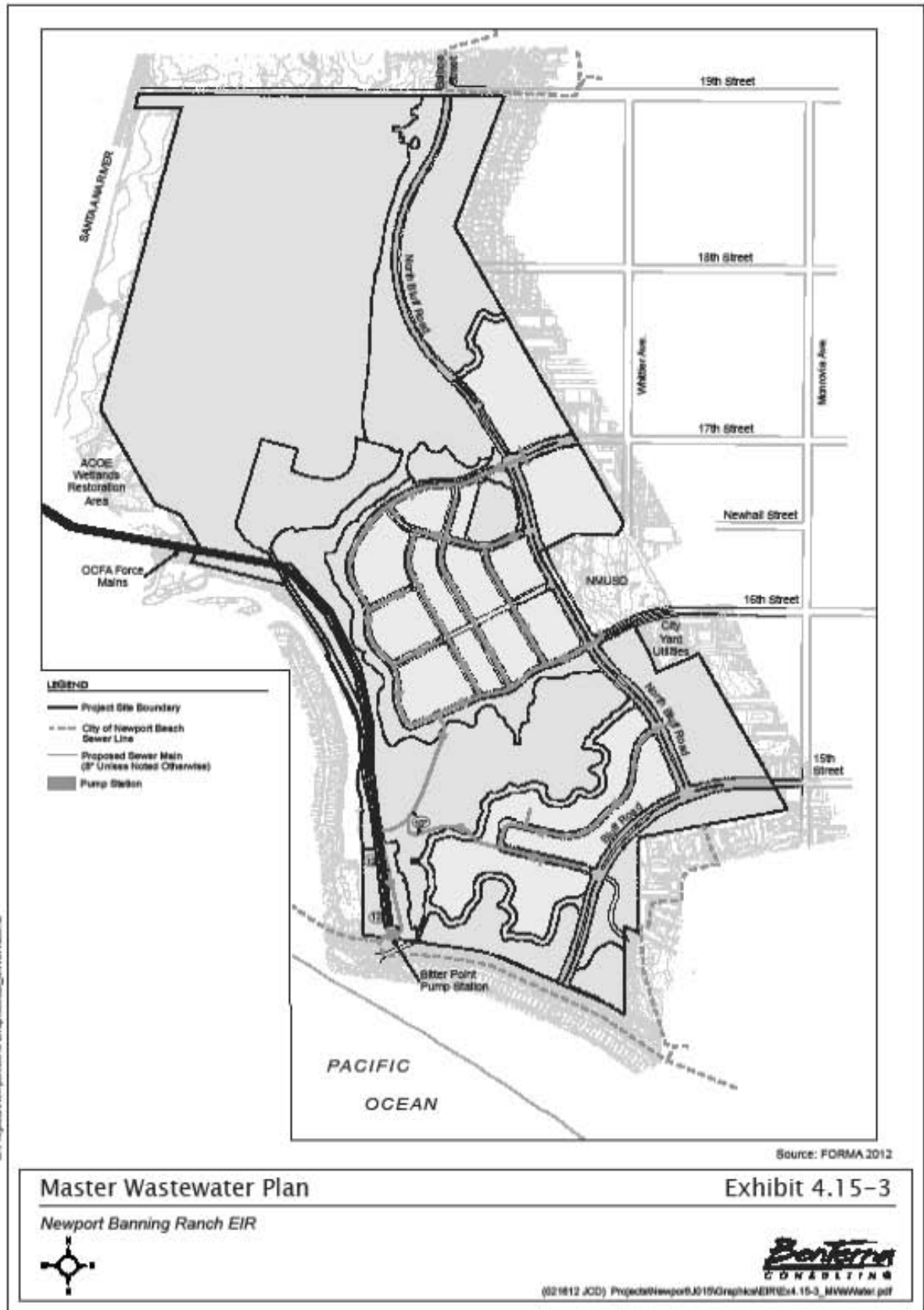
## **Response 13**

Page 4.15-27 of Section 4.15, Utilities, has been updated and is incorporated into the Final EIR as follows:

In the vicinity of the Project site, the OCSD operates facilities in West Coast Highway as well as the Bitter Point Pump Station and three force mains located within the Project site, all of which flow to Wastewater Treatment Plant 2.... The OCSD also provides up to ~~40~~ 4G 104 mgd of treated wastewater to the OCWD for further processing for landscape irrigation and injection into the groundwater seawater intrusion barrier.

## **Response 14**

The comment is noted.



DIRECTORS

CLAUDIA C. ALVAREZ, ESQ.  
PHILIP L. ANTHONY  
DON BANKHEAD  
KATHRYN L. BARR  
DENIS R. BILODEAU, P.E.  
SHAWN DEWANE  
CATHY GREEN  
IRV PICKLER  
STEPHEN R. SHELDON  
ROGER C. YOH, P.E.



ORANGE COUNTY WATER DISTRICT

ORANGE COUNTY'S GROUNDWATER AUTHORITY

Comment Letter R8

OFFICERS

President  
CLAUDIA C. ALVAREZ, ESQ.  
  
First Vice President  
PHILIP L. ANTHONY  
  
Second Vice President  
DON BANKHEAD  
  
General Manager  
MICHAEL R. MARKUS, P.E.

November 4, 2011

Patrick J. Alford  
City of Newport Beach  
3300 Newport Boulevard  
PO Box 1768  
Newport Beach, CA 92685

Dear Mr. Alford:

Subject: Newport Banning Ranch Draft Environmental Impact Report,  
State Clearinghouse No. 2009031061

The Orange County Water District (OCWD, the District) appreciates the opportunity to comment on the Draft EIR for the Newport Banning Ranch Project. OCWD was established by the State of California in 1933 to manage the Orange County Groundwater Basin. Water produced from the basin is the primary water supply for approximately 2.5 million residents in Orange County. OCWD maintains and operates facilities in the cities of Anaheim and Orange, which include the Santiago Basins, to recharge surface water into the groundwater basin. OCWD also operates a seawater intrusion control system in Fountain Valley and Huntington Beach to control seawater intrusion into the groundwater basin.

Please make the following changes to the description of the Orange County Water District on page 4.15-16:

1<sup>st</sup> paragraph: The OCWD ~~regulates~~ manages the use of groundwater supplies ~~through a as described in the District's Groundwater Basin Management Plan. A~~ through a as described in the District's Groundwater Basin Management Plan. A Groundwater Management Plan 2009 Update was considered and adopted by the OCWD Board of Directors on July 15, 2009 (~~Miller~~ OCWD 2009).

2<sup>nd</sup> paragraph: As part of the ~~regulation~~ management of groundwater supplies, the OCWD is ~~responsible for recharging local groundwater basins (including the La Habra Basin, the San Juan Basin, the Laguna Canyon Basin, and the Lower Santa Ana River Basin)...~~ recharges the Orange County Groundwater Basin...

PO Box 8300  
Fountain Valley, CA 92728-8300

18700 Ward Street  
Fountain Valley, CA 92708

(714) 378-3200  
(714) 378-3373 fax

www.ocwd.com

Patrick Alford  
November 4, 2011  
Page 2 of 2

3<sup>rd</sup> paragraph: OCWD's 2009 Draft Groundwater Management Plan Update estimates groundwater replenishment supplies of 61,000 afy (OCWD 2009).

3

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'MR Markus', with a stylized flourish at the end.

Michael R. Markus, P.E.  
General Manager

**Letter R8**      **Orange County Water District**  
Michael R. Markus, General Manager  
November 4, 2011

### **Response 1**

The last sentence in the first full paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

The OCWD ~~regulates~~ manages the use of groundwater supplies through a Groundwater Basin Management Plan. A Groundwater Management Plan 2009 Update was considered and adopted by the OCWD Board of Directors on July 15, 2009 (~~Miller~~ OCWD 2009).

Because of the change to the reference to C. Miller, the following reference in Section 9.0, References, is also changed and is incorporated into the Final EIR as follows:

Orange County Water District (OCWD). 2009 ~~Miller, C. 2009 (October 29).~~  
Personal communication. Telephone conversation between CG. Miller (OCWD)  
and J. Marks (BonTerra Consulting) regarding the Groundwater Management  
Plan 2009 Update.

### **Response 2**

The first sentence in the second paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

As part of the ~~regulation~~ management of groundwater supplies, the OCWD is ~~responsible for recharging local groundwater basins (including the La Habra Basin, the San Juan Basin, the Laguna Canyon Basin, and the Lower Santa Ana River Basin),~~ recharges the Orange County Groundwater Basin which generally involves recharge with Santa Ana River flows, recycled water, and imported water to maintain groundwater levels.

### **Response 3**

The third sentence in the third paragraph on page 4.15-16 has been changed and is incorporated into the Final EIR as follows:

OCWD's 2009 ~~Draft~~ Groundwater Management Plan Update estimates groundwater replenishment supplies of 61,000 afy (OCWD 2009).



Comment Letter R9



**South Coast**  
**Air Quality Management District**  
21865 Copley Drive, Diamond Bar, CA 91765-4182  
(909) 396-2000 • www.aqmd.gov

E-Mailed: November 10, 2011  
palford@newportbeachca.gov

November 10, 2011

Mr. Patrick J. Alford  
Community Development Department  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92658-8915

**Review of the Draft Environmental Impact Report (Draft EIR)**  
**for the Proposed Newport Banning Ranch Project**

The South Coast Air Quality Management District (AQMD) appreciates the opportunity to comment on the above-mentioned document included with an extended review period. The following comments are meant as guidance for the lead agency and should be incorporated into the final environmental impact report (final EIR) as appropriate.

Based on a review of the draft EIR the AQMD staff is concerned about the project's operational air quality impacts, greenhouse (GHG) emissions impacts and potential for odor impacts. Specifically, the lead agency has determined that the project's operational emissions will exceed the AQMD's CEQA significance thresholds for VOC's and CO resulting in significant regional air quality impacts.	1
Further, the project will have significant GHG emissions impacts that are primarily from mobile sources related to a substantial increase of vehicle trips associated with the proposed project's operations. However, the lead agency does not adequately address this increase in mobile source emissions and does not require sufficient mitigation measures to address mobile source emissions reductions. Therefore, the AQMD staff recommends that the lead agency minimize the project's significant air quality impacts and GHG emissions impacts by requiring additional mitigation pursuant to Section 15126.4 of the CEQA Guidelines.	2
Also, given the project's mix of land uses (e.g., an oilfield facility within 200 feet of residences) the AQMD staff is concerned about potential odor impacts from the proposed project and recommends that the lead agency adopt an odor minimization plan for the project. Details regarding these comments are attached to this letter.	3

Mr. Patrick J. Alford

2

November 10, 2011

AQMD staff is available to work with the lead agency to address these issues and any other questions that may arise. Please contact Dan Garcia, Air Quality Specialist CEQA Section, at (909) 396-3304, if you have any questions regarding the enclosed comments.

Sincerely,



Ian MacMillan  
Program Supervisor, CEQA Inter-Governmental Review  
Planning, Rule Development & Area Sources

Attachment

[IM:DG](#)

[ORC110913-04](#)  
Control Number

Mr. Patrick J. Alford

3

November 10, 2011

#### Mitigation Measures for Mobile Source Emissions

1. Based on a review of the air quality and GHG emissions analyses (Sections 4.10 and 4.11 of the draft EIR) the AQMD staff is concerned about the project's significant impacts due to mobile source emissions. Specifically, the lead agency determined that a significant amount of VOC, CO, and GHG emissions will be emitted during the project's operational phase from transportation sources. Although the lead agency determined that the project would be consistent with regional transportation strategies (e.g., SCAG Compass Blueprint) intended to reduce vehicle miles traveled (VMT), the lead agency still concludes that the project's substantial emissions, primarily from mobile sources, will result in significant impacts.

Further, under SB 375 SCAG is required to develop a sustainable community strategy (SCS) as a part of the 2012 RTP that achieves regional GHG reduction targets of 8% per capita for the planning year 2020 and 13% per capita for 2035. However, the lead agency has not stipulated specific mitigation measures or targets to reduce the substantial (i.e., approximately 50%) increase in mobile source emissions allowed under the proposed project. Therefore, pursuant to Section 15126.4 of the CEQA Guideline and consistent with the SCS the lead agency should minimize the project's significant air quality impacts by incorporating the transportation mitigation measures found in the greenhouse gas quantification report<sup>1</sup> published by the California Air Pollution Control Officer's Association in the final EIR.

#### Odor Minimization

2. On page 4.10-32, odor impacts, the lead agency states that field observations at the existing oilfield operations did not detect objectionable odors and future sensitive uses (i.e., residences and parks) would be at least 200 feet from the oilfields, therefore, detectable odors from oilfield operations would be few or none. However, the existing oilfield operation has previously been issued odor complaints. As a result, AQMD staff is concerned that bringing future residential uses substantially closer and downwind to oilfield operations could generate additional odor impacts. Therefore, the AQMD staff requests that the lead agency provide additional information on the potential for odor impacts from the proposed project in the final CEQA document and ensure that odor impacts are insignificant by requiring an odor minimization plan that includes guidelines to minimize or eliminate odors from the proposed project and provides a mechanism to address odor impacts in the future should they arise.

---

<sup>1</sup> California Air Pollution Control Officer's Association. August 2010. Quantifying Greenhouse Gas Mitigation Measures. Accessed at: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

**Letter R9**      **South Coast Air Quality Management District**  
Ian MacMillian, Program Supervisor  
November 10, 2011

### **Response 1**

The comment is noted.

### **Response 2**

The comment noted that “a significant amount of VOC, CO, and GHG emissions will be emitted during the project’s operational phase from transportation sources.” The SCAQMD states that, “the lead agency should minimize the project’s significant air quality impacts by incorporating the transportation mitigation measures found in the greenhouse gas quantification report published by the California Air Pollution Control Officer’s Association (CAPCOA)”.

The following four transportation measures are included in the Project Description, implied in the Project design, or described in Project Design Features (PDFs) 4.10-1 and 4.10-2. In the Draft EIR, these measures were not specified as being correlated with the CAPCOA document.

Increase density – CAPCOA measure LUT-1

Increase diversity of urban and suburban developments (mixed use) – LUT-3

Integrate affordable and below market rate housing – LUT-6

Provide pedestrian network improvements – SDT-1

The four measures above are “mitigation measures” in the CalEEMod model and were included in the Draft EIR emissions analysis. These measures provide emissions reductions of 29 percent VOC, 22 percent NOx, 23 percent CO, 35 percent PM10, and 32 percent PM2.5.

The Project includes PDF 4.11-3, which requires the Project to be coordinated with Orange County Transportation Authority (OCTA) to allow for a transit routing through the community, and would provide bus stops and/or shelters as needed in the community to accommodate the bus routing needed by OCTA. This PDF implements CAPCOA measure LUT-5, Increase Transit Accessibility. The measure was not included in the CalEEMod analysis because the input requires a single distance from the Project to a major transit facility, which is not compatible with the Project design. However, PDF 4.11-3 would reduce VMT and would reduce criteria pollutant and GHG emissions below the rates shown in the Draft EIR.

The Project includes MM 4.10-10, which requires bicycle facilities in multi-family, commercial, and resort buildings, which corresponds to CAPCOA transportation measures SDT-6 and SDT-7. CalEEMod does not include emissions reductions for these measures nor does the CAPCOA document quantify the reductions in vehicle miles anticipated from these measures; however, reductions would be additive to those calculated in CalEEMod.

The Project includes MM 4.11-5 which requires electric vehicle charging stations at the multi-family buildings and at the resort inn, which corresponds to CAPCOA transportation measures SDT-9, Provide Electric Vehicle Parking. CalEEMod does not include emissions reductions for these measures nor does the CAPCOA document quantify the reductions in vehicle miles anticipated from these measures; however, reductions would be additive to those calculated in CalEEMod.

To further encourage the use of electric vehicles, MM 4.11-5 has been revised and is incorporated into the Final EIR as follows:

**MM 4.11-5** Prior to the issuance of each building permit for multi-family buildings with subterranean parking and the resort inn, the Applicant shall submit for approval to the Community Development Director that the plans include the (1) the designation of a minimum of three percent of the parking spaces for electric or hybrid vehicles and (2) installation of facilities for Level 2 electric vehicle recharging, unless it is demonstrated that the technology for these facilities or availability of the equipment current at the time makes this installation infeasible. Prior to the issuance of each building permit for residential buildings with attached garages, the Applicant shall submit for approval to the Community Development Director that the plans (1) identify a specific place or area for a Level 2 charging station could be safely installed in the future; (2) includes the necessary conduit to a potential future Level 2 charging station; and (3) the electrical load of the building can accommodate a Level 2 charging station.

### Response 3

According to SCAQMD's Facility Information Detail (FIND) data base, there were two odor complaints for the West Newport Oil Company, one in 1999 and one in 2000. Therefore, there is no record of odor complaints for more than ten years. All tanks and producing equipment are closed systems. Open pits and sumps were discontinued by the 1980s. The potential for future odor impacts is considered to be very low. However, a mitigation measure has been incorporated into the Final EIR that requires Homeowners Associations to advise residents that odor complaints may be made to the City and to SCAQMD. Complaints to the City would be addressed in a timely manner. The following mitigation measure is proposed and incorporated into the Final EIR as follows:

**MM 4.10-13 Odor Complaints.** The future homeowners associations for Newport Banning Ranch shall be required to advise residents that complaints about offensive odors may be reported to the City using the Quest online format on the City web site and/or to the South Coast Air Quality Management District at 1-800-CUT-SMOG (1-800-288-7664). Disclosures shall be provided to prospective buyers/tenants of residential development regarding the potential of odors from the Project.



Comment Letter R10

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November 10, 2011

Mr. Patrick J. Alford  
Planning Manager  
City of Newport Beach, Community Development Department  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, California 92658-8915

**Subject: Draft Environmental Impact Report (DEIR) for the Newport Banning Ranch Project.**

Dear Mr. Alford:

The Orange County Transportation Authority (OCTA) has reviewed the above referenced document. The following comments are provided for your consideration:

- |   |   |
|---|---|
| <ul style="list-style-type: none"><li>• Please consider revising the Intersection Capacity Utilization (ICU) and Level of Service (LOS) tables. There are several ICU values that appear to have the incorrect LOS designations (e.g. Table 4.9-38 has inconsistent entries for ICU, decimal places, and LOS designations).</li></ul>   | 1 |
| <ul style="list-style-type: none"><li>• For clarification please identify what scenario and conditions or assumptions are being illustrated as part of the Figures.</li></ul>   | 2 |
| <ul style="list-style-type: none"><li>• It should be noted that the intersection of Newport Boulevard and 17<sup>th</sup> Street identifies an increase in ICU from 0.92 to 0.93. However, the ICU difference shows an increase of 0.005. Please provide clarification for this difference.</li></ul>   | 3 |
| <ul style="list-style-type: none"><li>• The improvement at Newport Boulevard and 19<sup>th</sup> Street recommends the addition of a southbound left-turn lane which would result in dual left-turn lanes. For clarification, this improvement is not included as part of OCTA's SR-55 Access Study, or the SR-55/Newport Boulevard Project Study Report/Project Development Support (PSR/PDS). We recommend that the proposed improvement be studied as part of the EIR.</li></ul>   | 4 |
| <ul style="list-style-type: none"><li>• On Page 4.9-3, the first paragraph under Master Plan of Arterial Highways states the following:<br/><br/>"The Orange County Master Plan of Arterial Highways (MPAH) is an adopted, countywide planning tool that defines the Orange County freeway, tollroad, and arterial circulation system that is forecasted to be required to serve the mobility needs of Orange County at buildout. Both the location and the carrying capacity (number of lanes) of each arterial are designated on the Orange County MPAH. OCTA administers the Orange County MPAH. Exhibit 4.9-1, Orange County MPAH, depicts the MPAH roadway network in the vicinity of the Project site."</li></ul> | 5 |





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It should be noted that the MPAH does not define the freeway and toll road circulation systems. These are shown for references purposes only on the MPAH. The MPAH only defines the arterial highway circulation system. This comment should be applied to the entire document.

5 cont.

- The DEIR provided a summary of OCTA's SR-55 Access Study. The PSR/PDS for the SR-55/Newport Boulevard is currently being prepared by OCTA, and is analyzing four alternatives. Please consider renaming Alternative 3 from "Vertical Terminal Enhancement" to "Elevated Turn Lanes," and rename Alternative 4 from "Cut/Cover Freeway Along Newport Boulevard Alternative" to "Cut and Cover."

6

- As part of the MPAH cooperative process, the City of Newport Beach will need to coordinate with potentially affected agencies, and achieve consensus on the proposed amendment, prior to approval of the Environmental Impact Report.

7

If you have any questions or comments, please contact Charles Larwood, Transportation Planning Manager, at (714) 560-5683 or at [clarwood@octa.net](mailto:clarwood@octa.net).

Sincerely,

Charles Larwood  
Manager, Transportation Planning

c: Ed Alegre, OCTA  
Joe Alcock, OCTA

**Letter R10 Orange County Transportation Authority**  
Charles Larwood, Manager, Transportation Planning  
November 10, 2011

**Response 1**

Table 4.9-38 has been changed and incorporated into the Final EIR to reflect the following corrections:

Intersection 9 – the PM peak hour Level of Service is “B”

Intersection 21 – the PM peak hour Level of Service is “E”

Intersection 57 – the PM ICU value should just read “0.82”

On other tables throughout the document, some of the delay values for unsignalized intersections are displayed with one or two extra zeros following the decimal point. This is a formatting issue, and does not affect the delay value or the outcome of the analysis.

**TABLE 4.9-38  
GENERAL PLAN BUILDOUT WITH PROJECT AND 19<sup>TH</sup> STREET BRIDGE:  
MPAH NETWORK ALTERNATIVE**

Intersection			Control	AM Peak Hour		PM Peak Hour	
				ICU/ Delay	LOS	ICU/ Delay	LOS
Newport Beach	1	Monrovia Ave/16th St	S	0.31	A	.35	A
	2	Placentia Ave/15th St	S	0.50	A	0.56	A
	3	Superior Ave/15th St	S	0.51	A	0.51	A
	4	Superior Ave/Placentia Ave	S	0.63	B	0.50	A
	5	Newport Blvd/Hospital Rd	S	0.63	B	0.75	C
	6	Orange St/W. Coast Hwy	S	0.74	C	0.77	C
	7	Prospect St/W. Coast Hwy	S	0.88	D	0.81	D
	8	Superior Ave/W. Coast Hwy	S	0.90	D	0.85	D
	9	Newport Blvd/W. Coast Hwy <sup>a</sup>	S	0.89	D	0.69	<del>C</del> B
	10	Riverside Ave/W. Coast Hwy	S	0.74	C	0.90	D
	11	Tustin Ave/W. Coast Hwy	S	0.61	B	0.84	D
	12	Dover Dr/W. Coast Hwy	S	0.79	C	0.90	D
Huntington Beach	13	Magnolia St/Hamilton Ave	S	0.73	C	0.74	C
	14	Bushard St/Hamilton Ave	S	0.51	A	0.63	B
	15	Brookhurst St/Hamilton Ave (Victoria St)	S	0.77	C	1.00	E
	16	Magnolia St/Banning Ave	S	0.61	B	0.51	A
	17	Bushard St/Banning Ave	S	0.69	B	0.76	C
	18	Brookhurst St/Banning Ave	S	0.45	A	0.51	A
	19	Magnolia St/Pacific Coast Hwy	S	0.82	D	1.18	F
	20	Brookhurst St/Bushard St	S	0.30	A	0.32	A
	21	Brookhurst St/Pacific Coast Hwy	S	0.73	C	0.91	<del>D</del> E
Costa Mesa	22	Placentia Ave/Victoria St	S	0.71	C	0.81	D
	23	Pomona Ave/Victoria St	S	0.70	B	0.82	D
	24	Harbor Blvd/Victoria St	S	0.66	B	0.77	C

**TABLE 4.9-38 (Continued)**  
**GENERAL PLAN BUILDOUT WITH PROJECT AND 19<sup>TH</sup> STREET BRIDGE:**  
**MPAH NETWORK ALTERNATIVE**

Intersection			Control	AM Peak Hour		PM Peak Hour	
				ICU/ Delay	LOS	ICU/ Delay	LOS
Costa Mesa	25	Newport Blvd/Victoria St	S	0.48	A	0.44	A
	26	Newport Blvd /Victoria St (22nd St)	S	0.86	D	0.53	A
	27	Whittier Ave/19th St	S	0.84	D	0.78	C
	28	Monrovia Ave/19th St	S	0.79	C	0.75	C
	29	Placentia Ave/19th St	S	0.54	A	0.57	A
	30	Pomona Ave/19th St	S	0.57	A	0.73	C
	31	Anaheim Ave/19th St	S	0.57	A	0.68	B
	32	Park Ave/19th St	S	0.53	A	0.60	A
	33	Harbor Blvd/19th St	S	0.49	A	0.63	B
	34	Newport Blvd/19th St	S	1.08	F	1.03	F
	35	Newport Blvd/Broadway	S	0.69	B	0.87	D
	36	Newport Blvd/Harbor Blvd	S	0.78	C	1.12	F
	37	Newport Blvd/18th St (Rochester St)	S	0.82	D	1.09	F
	38	Placentia Ave/18th St	S	0.46	A	0.48	A
	39	Whittier Ave/17th St	S	0.41	A	0.52	A
	40	Monrovia Ave/17th St	S	0.34	A	0.44	A
	41	Placentia Ave/17th St	S	0.39	A	0.49	A
	42	Pomona Ave/17th St	S	0.51	A	0.54	A
	43	Superior Ave/17th St	S	0.80	C	0.80	C
	44	Newport Blvd/17th St	S	0.83	D	0.93	E
	45	Orange Ave/17th St	S	0.42	A	0.61	B
	46	Santa Ana Ave/17th St	S	0.43	A	0.51	A
	47	Tustin Ave/17th St	S	0.44	A	0.57	A
	48	Irvine Ave/17th St	S	0.64	B	0.91	E
	49	Placentia Ave/16th St	S	0.25	A	0.30	A
	50	Superior Ave/16th St	S	0.57	A	0.50	A
	51	Newport Blvd/16th St	S	0.68	B	0.75	C
	52	N. Bluff Rd/Victoria St	S	0.93	E	0.87	D
On-Site	53	N. Bluff Rd/19th St	S	0.64	B	0.72	C
	54	N. Bluff Rd/17th St	S	0.58	A	0.59	A
	55	Bluff Rd/16th St	U	0.25	A	0.33	A
	56	Bluff Rd/15th St	S	0.29	A	0.35	A
	57	Bluff Rd/West Coast Hwy	S	0.79	C	0.82NA	D
	57a	17 <sup>th</sup> St/West Coast Hwy	S	0.71	C	<del>0.80</del> 0.82	C
	57b	17 <sup>th</sup> St/15 <sup>th</sup> St	S	0.31	A	0.43	A
Notes: S = Signalized, U=Unsignalized <b>Bold</b> and shaded values indicate intersections operating at LOS E or F. Intersection operation is expressed in volume-to-capacity (v/c) for signalized intersections using the ICU Methodology. <sup>a</sup> CMP intersection Source: Kimley-Horn 2011.							

## Response 2

In each case, the exhibit titles describe the scenario being analyzed, and the exhibits themselves depict the roadway network for that scenario. For example, Exhibit 4.9-9, on page 4.9-37 of Section 4.9, presents results for *Year 2016 Without Project* (as indicated in the exhibit title) and the diagram shows no roadway network through the Project site. Exhibit 4.9-10, on page 4.9-43 presents results for *Year 2016 With Project* (as indicated in the exhibit title) and the diagram shows the full roadway network proposed by the Project through the Project site.

## Response 3

In all cases, the ICU results are rounded to two decimals, and the project impact (the difference between the “With” and the “Without” scenarios) is calculated to 3 decimals. This is in accordance with the traffic study requirements of the City of Newport Beach.

## Response 4

The Traffic Impact Analysis for General Plan Buildout conditions assumed that the area street network would be built out according to the adopted City of Newport Beach General Plan Circulation Element Master Plan of Streets and Highways and Orange County Master Plan of Arterial Highways. This includes the termination of SR-55 as a freeway facility at 19<sup>th</sup> Street, and the continuation of SR-55 as an arterial roadway to West Coast Highway. The recommended mitigation for the intersection of Newport Boulevard at 19<sup>th</sup> Street is an intersection improvement that would achieve an acceptable Level of Service for this intersection under the assumed network conditions. The fact that there are prior and ongoing studies of a number of improvement alternatives for the extension of SR-55, which could result in significant changes in traffic patterns throughout the study area, is acknowledged. The alternatives under evaluation are not yet adopted and therefore were not included in the Project impact evaluation.

## Response 5

The comment regarding freeways and toll roads on the Orange County MPAH is acknowledged.

## Response 6

The names of two of the SR-55 alternatives have been changed on pages 4.9-133 and -134 of Section 4.9, Transportation and Circulation, and are incorporated into the Final EIR as follows.

### **Vertical Terminal Enhancement Elevated Turn Lanes Alternative**

The ~~Vertical Terminal Enhancement~~ Elevated Turn Lanes Alternative proposes improvements in increments, by first addressing 17<sup>th</sup> and 19<sup>th</sup> Streets and Superior Avenue to improve congestion within the corridor. This alternative would study whether improvements at the two ends of the corridor are adequate to address congestion along the entire corridor, and determine the effects of such a strategy.

The ~~Vertical Terminal Enhancement~~ Elevated Turn Lanes Alternative represents a constrained network with improved mobility to 19<sup>th</sup> Street on the west side of Newport Boulevard by adding:

- A ramp braid at the southbound Newport Boulevard tie-in at the SR-55;

- A free-right turn lane from Newport Boulevard to 19<sup>th</sup> Street (existing bus turn-out to the west would be relocated); and,
- An eastbound 19<sup>th</sup> Street to northbound SR-55 flyover structure.

**~~Cut/Cover Freeway Along Newport Boulevard~~ Cut and Cover Alternative**

The ~~Cut/Cover Freeway Along Newport Boulevard~~ Cut and Cover Alternative would involve the construction of an entirely new structure below Newport Boulevard. The alternative would provide a four-lane controlled access freeway under Newport Boulevard from 19<sup>th</sup> Street to Industrial Way and an interchange at 19<sup>th</sup> Street. Newport Boulevard would be maintained as an eight-lane arterial with side street access.

**Response 7**

The cooperative process with affected agencies is underway, with the goal of achieving consensus through consideration of the EIR.